

PUBLIC HEARING FOR)
)
PROPOSED NOISE STANDARDS)

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1 P R O C E E D I N G S

2 MR. NICHOLS: Good morning, everybody, and welcome
3 to MSHA's public hearing on our noise standard for metal and
4 nonmetal and coal mining.

5 Let me introduce the rest of the panel. On my
6 left, Jim Carter, with Metal and Nonmetal. Victoria Pilate,
7 Office of Standards, Regulations and Variances. Roslyn
8 Fontaine, down on the other end, also from the Office of
9 Standards, Regulations and Variances. Jack Powasnik -- I
10 ought to let Jack introduce himself. I have a little --

11 MR. POWASNIK: Powasnik.

12 MR. NICHOLS: Powasnik -- ah, from the Solicitor's
13 Office. And Mike Valoski, from the Office of Tech Support.

14 We're here today to listen to your comments on the
15 December 17, 1996, proposed rule revising certain portions
16 of the existing health standards for noise exposure in coal
17 and metal and nonmetal mines. The hearings are being held
18 in accordance with Section 101 of the Federal Mine Safety
19 and Health Act of 1977. As is the practice of the Agency,
20 formal rules of evidence will not apply at this hearing.

21 Let me give you some background on the proposed

1 rule that we're here to talk about today. MSHA published an
2 Advanced Notice of Proposed Rulemaking on December 4, 1989,
3 as part of the Agency's ongoing review of its health -- of
4 its safety and health standards. The Agency's existing
5 noise standards, which were promulgated more than 20 years
6 ago, are inadequate to prevent the occurrence of
7 occupational noise-induced hearing loss among miners.

8 In the Advanced Notice of Proposed Rulemaking, the
9 Agency solicited information for revision of the noise
10 standards for coal and metal and nonmetal mines. The
11 comment period was closed on July 15, 1990.

12 On December 17, 1996, in response to information
13 received on the Advanced Notice of Proposed Rulemaking, MSHA
14 published the proposed standard. The Agency has developed a
15 proposal that it estimates can reduce by two-thirds the
16 number of miners currently projected to suffer a hearing
17 loss, but which it estimates can be implemented at a cost of
18 less than nine million dollars to the mining industry as a
19 whole.

20 The focus of the proposal is on the use of -- on
21 the use of the most effective means to control noise:

1 engineering controls to eliminate the noise or
2 administrative controls -- for example, rotating miner
3 duties to eliminate noise exposure whenever feasible.

4 The proposed standard would retain the existing
5 permissible exposure level, the PEL. It would also
6 establish a new action level of an 8-hour time-weighted
7 average of 85 dBa. If a miner is exposed -- if a miner's
8 exposure exceeds the PEL, the proposal would require that
9 the mine operator use feasible engineering and
10 administrative controls to reduce noise exposure to the PEL.

11 If engineering and administrative controls do not
12 reduce the miner's noise exposure to the PEL, the operator
13 must use those controls to lower exposure to as close to the
14 PEL as is feasibly achievable.

15 In addition, the operator would have to provide
16 any exposed miner annual audiometric examinations, properly
17 fitted hearing protection and ensure that the miner takes
18 the annual audiometric examination and uses such protection.

19 The comment period was extended from February 18,
20 1997, to April 21, 1997, due to requests from the mining
21 community. MSHA has received a broad range of comments from

1 over 60 different interests, which included mine operators,
2 industry trade associations, organized labor, colleges and
3 universities, and noise equipment manufacturers.

4 The comments addressed the primary provisions of
5 the proposed rule, such as the action level, the PEL,
6 methods of compliance, exposure monitoring and audiometric
7 testing.

8 Let me talk for a few minutes about the provisions
9 of the proposed rule. Exposure to noise is measure under
10 proposed Section 62.120. The proposed section would require
11 that a miner's noise exposure not be adjusted for the use of
12 hearing protectors, that a miner's noise exposure integrate
13 all sound levels from 80 dBa to at least 130 dBa during the
14 miner's full work shift, and that the current 5 dB exchange
15 rate to measure the level of the miner's noise exposure
16 would continue to be used.

17 An action level of 85 dBa during any work shift
18 or, equivalently, a dose of 50 percent, would also be
19 established under the proposed rule. For miners who are
20 exposed to the 85 dBa action level, the proposed rule does
21 not require the use of engineering and administrative

1 controls. Rather, operators would be required to provide
2 personal hearing protection upon a miner's request, annual
3 employee training, and enrollment in a hearing conservation
4 program.

5 The proposed rule would also retain the existing
6 PEL of 90 dBa, requiring that no miner be exposed to noise
7 exceeding a time-weighted average of 90 dBa during any work
8 shift or, equivalently, a dose of 100 percent. While the
9 PEL would not change, the action level required if noise
10 exposure exceeds the PEL are different from the current
11 requirements.

12 MSHA's existing metal and nonmetal noise
13 standards, for example, already require the use of feasible
14 engineering or administrative controls when a miner's noise
15 exposure exceeds the PEL. The existing standards, however,
16 do not require the mine operator to post the procedures for
17 any administrative controls used, to conduct specific
18 training, or to enroll miners in a hearing conservation
19 program.

20 Under MSHA's current coal mining standard, a
21 citation is not issued when a miner's exposure exceeds the

1 PEL if appropriate hearing protection is being used by the
2 miners. In the event of a violation of the coal mining
3 standard, operators are required to promptly institute
4 engineering and/or administrative controls and to submit to
5 MSHA a plan for the administration of a continuing effective
6 hearing conservation program.

7 The proposed rule would establish a hierarchy of
8 controls for all miners when exposed -- when exposure
9 exceeds the PEL. In addition, other aspects of the rule
10 increase protection to miners and further reduce the
11 potential for hearing loss. Under the proposal, mine
12 operators must first utilize all feasible engineering and
13 administrative controls to reduce sound levels to the PEL
14 before relying on other controls to protect against hearing
15 loss.

16 Furthermore, an operator would be required to
17 ensure that miner whose exposure exceeds the PEL takes the
18 hearing examination offered through enrollment in a hearing
19 conservation program. Under proposed Section 62.120(f),
20 MSHA would require operators to establish a system of
21 monitoring which effectively evaluates each miner's noise

1 exposure.

2 The proposal would also require that within 15
3 calendar days of determining that a miner's exposure
4 exceeded the action level, the PEL, the dual hearing
5 protection level, or the ceiling level, the mine operator
6 must notify the miner in writing of the overexposure and the
7 corrective action being taken pursuant to Section 103(c) of
8 the Mine Act.

9 The proposed rule also provides for hearing
10 protection and training. Under proposed Section 62.125,
11 miners would be given a choice from at least one muff type
12 or one plug type hearing protector. Under Section 62.130,
13 miners would be given the required training.

14 Additionally, under proposed Section 62.140,
15 operators would be required to offer base line audiograms to
16 miners enrolled in a hearing conservation program; that is,
17 when a miner's exposure exceeds the action level.

18 Prior to conducting the base line audiogram,
19 operators will be required to make certain that miners have
20 at least a 14-hour period where there are no -- where they
21 are not exposed to workplace noise. Use of hearing

1 protectors as a substitute for this quiet period would be
2 prohibited.

3 The proposed rule would also require mine
4 operators to offer a valid audiogram at intervals not
5 exceeding 12 months for as long as the miner remains in the
6 hearing conservation program.

7 Proposed Section 62.150 would require the operator
8 to assure that all audiometric testing is conducted in
9 accordance with scientifically validated procedures. MSHA
10 would also require that audiometric test records be
11 maintained at the mine site for the duration of the affected
12 miner's employment, plus at least six months thereafter.

13 Under proposed Section 62.160, operators would
14 have 30 days in which to obtain audiometric test results and
15 interpretations.

16 Additionally, under proposed Section 62.180 -- let
17 me reread that. I kind of messed it up. Under proposed
18 Section 62.160, operators would have 30 days in which to
19 obtain audiometric test results and interpretations.

20 Additionally, under proposed Section 62.180, MSHA
21 would require that, unless a physician or audiologist

1 determines that a standard threshold shift is neither
2 work-related nor aggravated by occupational noise exposure
3 within 30 calendar days of receiving evidence of a standard
4 threshold shift or results of a retest confirming a standard
5 threshold shift, the operator must do the following: one,
6 retrain the miner. Two, allow the miner to select a hearing
7 protector or a different hearing protector. And, three,
8 review the effectiveness of any engineering and
9 administrative controls to identify and correct any
10 deficiencies.

11 Proposed Section 62.150 would require that within
12 10 working days of receiving the results of an audiogram or
13 receiving the results of a follow-up evaluation, the
14 operator will notify the miner in writing of the results and
15 interpretation of the audiometric test, including: one, any
16 finding of a standard threshold shift or a reportable
17 hearing loss; and, two, if applicable, the need and reasons
18 for any further testing or evaluation.

19 And finally, the proposed rule would require that
20 the operator provide the miner, upon termination of
21 employment, with a copy of all records that the operator is

1 required to maintain under this part without cost to the
2 miner.

3 This the first of six hearings that we'll be
4 having. We will also receive comment and testimony on the
5 proposed rule in St. Louis, Missouri, on May 8; in Denver,
6 Colorado on May 13; in Las Vegas, Nevada, on May 15; in
7 Atlanta, Georgia, on May 28; and in Washington, D.C., on
8 May 30. All the hearings will begin at 9 a.m. and end at
9 5 p.m., but, if necessary, the MSHA panel will, you know,
10 stay as long as anybody wants to comment.

11 Now, I want to turn the hearing over to Bob
12 Thaxton. I think I missed Bob in my first introduction
13 here, but Bob is on my staff back in our headquarters
14 office, in our Health Division, and he will moderate the
15 rest of the hearing. Thank you.

16 MODERATOR THAXTON: Good morning. As Marvin just
17 stated, my name is Bob Thaxton. I'm with MSHA's Coal Mine
18 Safety and Health Division and I will be the moderator for
19 today's hearing.

20 MSHA views these hearings -- ah, rule activities
21 as extremely important. And we realize that your presence

1 here indicates that you also are very concerned about this
2 rulemaking.

3 To ensure that we have an adequate record that is
4 made during this proceeding, when you present your oral
5 statements or otherwise address the Panel, we would ask that
6 you approach the podium that's in the center, state your
7 name, spell your name, and then state the organization or
8 your affiliation.

9 The order of presentation for the public
10 statements will be in the order in which we received
11 requests. And that order for today will be as follows:
12 Steve Moss will be first, followed by Gerald Ellison, Hank
13 Bailess --

14 VOICE ONE: He's not here.

15 MODERATOR THAXTON: He's not here? Jim Bennett,
16 Reggie Sizemore, Jim Bias, Keith Casto, Ron Fluty, Bobby
17 Little, Brent Dillon, John Poindexter, Jackie Cook and Gary
18 Trout.

19 VOICE TWO: Ron Fluty and Bobby Little have sent
20 myself and another person as a substitute.

21 MODERATOR THAXTON: When it comes time for their

1 presentations, if you would, please, come to my far right,
2 to Ros Fontaine, and sign the speaker's list, please.

3 VOICE TWO: Okay, thank you.

4 MODERATOR THAXTON: In addition, we have 17 other
5 persons that have signed up to make presentations during
6 this hearing. They have asked, though, that those
7 presentations will not begin until 4 p.m. today, so there
8 may be a time lag between presentations today, that we will
9 adjourn for a short period of time and then come back for
10 the second tier of this presentation.

11 The 17 people that will be presenting this
12 afternoon are: Bill Cox, Tony -- I can't pronounce this
13 name, so I'll spell it -- P-I-S-S-O-S -- Pissos. Brad
14 Liston, Roger Sparks, Wendall Huhn, Lloyd Smith, Robert
15 Shain, Lewis Stollings, Charles Williams, Terry Lewis, Mark
16 Cochran, Dave Hooper, Tony King, Paul Walker, Jeff King,
17 Larry Rosner -- Rosser, and Dennis O'Dell. And as we said,
18 those people have asked to begin their presentations after
19 four o'clock today.

20 It is MSHA's intent that all persons who wish to
21 make -- to speak will be given the opportunity to do so.

1 Anyone who has not previously signed up to make a
2 presentation or -- and speak to the Panel, we encourage you
3 to go ahead and sign up now. Again, if you would, come to
4 see Ms. Fontaine, on my far right, and sign the speaker's
5 list.

6 Due to the request to hold hearings at four
7 o'clock for the last 17 names that I gave, anybody that's in
8 the audience that was not listed as a speaker and wishes to
9 address the Panel, we will allow time for that at the end of
10 the people that have signed up for this morning's session.

11 The Chair will attempt to recognize all speakers
12 in the order in which they requested to speak. If
13 necessary, though, the Chair reserves the right to modify
14 the order of presentation in the interest of fairness.
15 Also, as the moderator, I may exercise discretion to include
16 irrelevant or unduly repetitious material. And, in order to
17 clarify certain points, the Panel may ask questions of the
18 speakers.

19 MSHA will accept written comment and other
20 appropriate data on the proposal from any interested party,
21 including those who will not present oral statements.

1 Written comments may be submitted to Roslyn Fontaine during
2 this hearing or sent to Patricia Silvey, Director of MSHA's
3 Office of Standards, at the address listed in the hearing
4 notice.

5 All comments are important to the Agency. Should
6 anyone desire to modify their comments or submit additional
7 comments following the hearing, the record will remain open
8 until June 20, 1997.

9 If possible, the Agency would appreciate getting
10 your comments on a disk. The comments are essential to
11 helping MSHA develop the most appropriate rule that improves
12 the health of the nation's miners. MSHA has received
13 extensive comments on the proposed rule. We appreciate the
14 constructive criticism and the hard and careful thought
15 which your comments represent.

16 On behalf of the Assistant Secretary Davitt
17 McAteer and MSHA, I would like to take this opportunity to
18 express our appreciation to each of you for being here today
19 and for your input. We look forward to your continued
20 participation in this rulemaking activity.

21 Before we begin with the first speaker -- in

1 addition, a verbatim transcript of this hearing is being
2 taken. It will be made an official part of the rulemaking
3 record. The hearing transcript, along with all the comments
4 that MSHA has received to date on the proposed rule, will be
5 available for review by the public. If you wish a personal
6 copy of the hearing transcript, however, you can make your
7 own arrangements with the reporter.

8 Again, before we start the first oral
9 presentation, I would remind you to please sign the sign-up
10 sheet at the back of the room, whether you're making a
11 presentation or not. It is simply an attendance sheet.

12 Again, if your name doesn't show up on the list of
13 speakers and you wish to make a presentation to the panel,
14 please come see Ms. Fontaine and sign that sheet. If you're
15 making a presentation to the Panel, if you have copies of
16 data or material, please present that to the Committee at
17 the time that you come forward to make your presentation.

18 With that, we'd like to begin with our first
19 speaker. And the first speaker is Steve Moss.

20 Mr. Moss? (No response.)

21 Mr. Moss is not here? Okay, the next speaker on

1 the list is Gerald Ellison.

2 MR. ELLISON: My name is Gerald Ellison --
3 G-E-R-A-L-D E-L-L-I-S-O-N -- and I represent the United
4 Mine Workers. Ah, first of all, I'd like to thank the Panel
5 for giving me the opportunity to speak about this subject.
6 I have 24 years' mining experience, four of that being
7 underground; the rest being in the preparations plant --
8 preparation plant, which I currently work at.

9 Ah, I have been on this same plant since it was
10 built. And when the plant was originally built, we did have
11 noise suppression built right into it. We had rubber-lined
12 chutes. Ah, we had lead-lined curtains that suppressed the
13 noise and -- and everything was engineered in to suppress
14 the noise that we had.

15 Since then, ah, all that has deteriorated. It's
16 not been replaced. Where we once had rubber-lined chutes,
17 we've got steel chutes now. And the noise has increased
18 dramatic -- dramatically. Ah, over the, ah, time, I guess
19 these noise regulations have changed and have gotten lax and
20 -- and the company has gotten lax with, ah, keeping noise
21 down as well.

1 Ah, working on a preparation plant, you, ah, have
2 communications. We have, ah, phones over the whole surface
3 area. Many times, we're required to wear two-way radios, so
4 -- and, ah, communications is -- is a vital part of safety.
5 Ah, you need to be able to hear when someone is -- is, ah,
6 paging you or call you. And sometimes, at our plant, ah,
7 the noise is -- is such that you can't even you're being
8 called.

9 Ah, we have a backup plan for that. Ah, a lot of
10 times when people can't hear themselves (sic) being called
11 on the phone or the radio, they have a siren that they blow,
12 which -- and it's real loud as well. So, ah, communications
13 is a -- is a big part of, ah, a plant operation. Like I
14 said, it has a -- a great safety factor. And if you can't
15 hear -- if you can't hear those communications, you --
16 you've got a lot of problems sometimes. And -- and it could
17 -- ah, it could be a hazard.

18 Ah, sometimes the communications theirselves (sic)
19 -- we have radios and equipment that -- that, ah, you know,
20 there's constantly chatter on. We have -- we have trucks
21 coming in on the job that, ah, you're just continually bard-

1 -- bombarded with noise.

2 Ah, I had the opportunity yesterday to look at the
3 last noise survey that -- that our company had. We only had
4 one area of our whole surface facility that, ah, would have
5 met today's standard, which was 82. The rest of the areas
6 were all in the 90s and the 100 dBa's. So, you can see, ah,
7 if -- if this -- if these regs were in place right now, they
8 -- they wouldn't be in violat- -- they would be in violation
9 about everywhere.

10 Ah, with the current regulations, which our
11 company policy is the same thing. They say, well, you need
12 to wear ear plugs or ear muffs. There are problems with
13 those, too. I think you all have -- have already sensed
14 that the people just aren't wearing them, and they aren't.

15 Ah, with ear muffs, you -- you -- we've tried
16 several brands. You can't get ear muffs that will fit your
17 ears good without interfering with your hard hat. There's
18 just -- just not -- not room for both. So, a lot of people
19 that -- that would like to wear ear muffs can't.

20 The ear plugs, ah, a lot of people can't -- ah,
21 I'd say not "don't", but "can't" wear them, because, ah,

1 there's a coating or something on them that some people are
2 allergic to. You wear ear plugs one day; you have a sore
3 throat the next day. Ah, so we have a lot of people that,
4 ah, will tear up tissue paper and cram that in their ears.
5 Cigarette butts, anything like that. So, I'd -- that's what
6 you've got out there now. Ah, like I said, a lot of people
7 just don't wear them because of the inconvenience.

8 Ah, you have other problems that -- that
9 indirectly contribute to -- to noise problems as well. A
10 good example would be in a piece of heavy equipment -- say,
11 the air conditioner goes out. You're not going to stay in
12 there in 120 degree heat, so you're going to open the doors.
13 When you open the doors, you're opening up to noise and
14 dust.

15 So, a lot of times, ah, this equipment, ah -- ah,
16 isn't maintained to where you can keep the -- the noise
17 down, ah, as well as the dust.

18 Ah, as -- as our industry becomes more and more
19 mechanized, we're going to have more and more noise. As I
20 said, our plant, ah, was built in the early '70s. Since
21 then, it has been added on many, many times. More

1 machinery. Ah, you've got more machinery crammed in, ah --
2 ah, increasingly smaller space, which is, there -- there,
3 again, more noise.

4 Most of the -- the men that I work with, ah, we've
5 had physicals from time to time and most of them that I know
6 of have had a hearing loss increase every physical that
7 they've taken. Most of them just tell us, well, that's
8 natural because you're in that industrial range. Ah, I
9 guess some -- some would say it's because of our age as
10 well. But, ah, it's a real problem out there. And, ah,
11 most -- most of us have had the hearing loss, that are
12 compensated with hearing aids, and which most don't wear.

13 You know, we don't want to wear hearing aids. We
14 want to just keep our hearing that we've got. So, I would
15 -- I would urge you to, ah, set up a system that would let
16 -- allow MSHA to monitor this program. I would urge you to
17 -- to drop the dBa's down to where they once were, where
18 that -- you know, we don't have to continue to suffer these
19 hearing losses. Ah, most of us now are -- are within sight
20 of retirement and we would like to go have a retirement
21 where we're not, ah, strapped down with hearing aids and we

1 wouldn't be able to hear as well.

2 Ah, once again, I'd like to thank you for allowing
3 me to speak.

4 MODERATOR THAXTON: Thank you, Mr. Ellison.

5 Our next speaker is Jim Bennett.

6 MR. BENNETT: Good morning. It's a pleasure to be
7 here and to, ah -- ah, be able to represent some of the
8 needs of the coal miners. My name is James Bennett. That's
9 J-A-M-E-S B-E-N-N-E-T-T. I represent the UMWA. I'm an
10 employee of Meadow River Coal Company. That's a Pittston,
11 ah, operation in Fayette County, here in West Virginia.

12 Ah, I have looked at the regulations that MSHA
13 proposed. And, ah, I am not a -- a audiologist (sic) I
14 believe is the proper word that you, ah, described that
15 person that, ah, knows about hearing losses and problems.
16 I'm a coal miner. I've been a coal miner ever since I got
17 out of the service in 1973.

18 Ah, I do know that I have experienced some hearing
19 loss. Ah, I have been to the doctor. I have had my hearing
20 checked. Ah, you get behind a little glass wall. They hit
21 a sound. They tell you to push a button. Ah, to me it all

1 sounded like static. I pushed the button because the girl
2 would look in the window and say, "Can't you hear anything?"
3 And I'd push the button, you know, to -- I wanted to do the
4 test. I didn't want to look like I was a moron setting in
5 there on a stool.

6 So, when I came out of the chamber and, ah, they
7 apparently went over the examination and they told me, they
8 said, "Well, Mr. Bennett," they said, "you have some high
9 frequency losses, but it's nothing really to be concerned
10 about because those pitches are higher than what you
11 normally, ah, communicate with people with."

12 And I thought, well, you know, that's cool. So,
13 ah, I -- I can hear. I can hear the news. Ah, I can hear
14 the radio in my truck, when I turn it up rather loud.

15 Only last night, I had rented a movie and I was
16 setting there at the house and the children came in, doing
17 their homework, "Dad, what's wrong?" And I said, "Well,
18 nothing's wrong. Why?" "Can you not turn the TV down?
19 We're trying to do our homework." And I said, "Hey, I -- I
20 rented the movie. I'd like to listen to it." And, ah, you
21 know, it's -- it's just, ah, an aggravation. Ah, it's not

1 like that, ah -- ah, it's detrimental to your life, but it's
2 an aggravation to you as you experience your life.

3 Ah, I'm, ah, classified as a utility man there in
4 the coal mines and I do different types of work. Ah, I, ah,
5 work in the face -- I work out by -- and, ah, I do
6 everything from run a motor to run a roof bolt machine.

7 I always wear a necklace-type ear protection
8 system. Ah, it has the two plugs you put in your ears. Ah,
9 I find that more comfortable for me to wear because, ah,
10 it's not like twisting the little piece of foam rubber and
11 stick it in your ear and leave it all day long. You know,
12 if you want to say something, you have to pull it out and
13 stick it in your pocket. I can just loosen them and let
14 them go around my neck.

15 And it's so important, when you're on a roof bolt
16 machine, that you communicate, ah, with the person that
17 you're working with. Ah, occasionally, you're watching the
18 top and you can see a crack in the top that your buddy can't
19 see. Now, we have a respirator on. We have safety glasses
20 on. And now we've got these ear protection, ah, device on.
21 And it's hard to communicate. Ah, normally, you just do it

1 by signalling with your hands. Ah, but even when you turn
2 the machine off, you back out of the place, you're setting
3 down to each lunch, you just hear a -- a roar in your head.

4 Ah, the other -- the other day, I, ah, was
5 experiencing some sinus problems. And, ah, the ear plugs
6 were really irritating me. So, I thought, well, I just
7 won't wear them today. At night, when I went -- got home, I
8 woke up at about two o'clock in the morning and shook my
9 wife and said, "Honey, answer the phone." She said, "The
10 phone's not ringing." I said, "Why, I've heard it ring
11 three times. I know it is." I laid back down and I could
12 hear this ringing in my ears.

13 And I -- you know, the next morning, as I was
14 having breakfast, I thought, well, why would this happen? I
15 remembered, I hadn't worn my ear plugs.

16 But, the thing of it is, is we need more help than
17 -- and the proposal that you folks have -- have laid out
18 before us are -- are great. But, ah -- and I -- I
19 acknowledge that, you know, it's -- it's an improvement.
20 But we need more improvement.

21 Ah, I'm -- I have been in the mines, like I said,

1 for over 20 years. To my knowledge, I have never had a
2 sound test taken on, ah, the equipment as I operated it.
3 Now, at my mines, they -- they do sounding -- ah, the sound
4 test on the equipment. I -- I suppose -- I hear they do. I
5 have never experienced it.

6 But even if you're at a belt head out by, if
7 you're shoveling belt, a lot of times, I -- I'll take my ear
8 plugs and put them in, because just the continuous running
9 of the belt. Ah, you know, there's -- there's no silence.
10 It's just a continuous noise that, ah, that just, you know
11 -- like I said, a coal miner for less of -- ah, for lack of
12 a better expression, just wears your ears out.

13 And, ah, I -- I appreciate the opportunity that
14 you've given us to come before you this morning and, ah, to,
15 ah, to give our version. But I -- I would appreciate it
16 even more if you would, ah, let, ah, some other officials
17 besides the officials of the company monitor this noise.

18 You know, we have to rely on them so much for, ah,
19 dust samples. Now, for noise samples. And, ah, we -- we
20 need a different monitoring, ah, division so that we can put
21 more faith in it. We -- it's not -- I'm not standing up

1 here saying that the people I work with are unfair, that
2 they, ah -- that they might cheat on the exam or whatever.
3 But I would -- I would put more, ah, faith in another
4 organization, rather than being self-monitored by the
5 company.

6 I thank you for your time this morning and I hope
7 my few broken words have said something that might be of
8 benefit to the mining industry. Thank you.

9 MODERATOR THAXTON: Thank you, Mr. Bennett.

10 And as we've stated, all comments are important to
11 us, so please, we do accept the terms and the situations
12 that you are in.

13 Our next speaker is Reggie Sizemore.

14 MR. SIZEMORE: Thank you. Ah, my name is Reggie
15 Sizemore. That's R-E-G-G-I-E S-I-Z-E-M-O-R-E. I'm a
16 member of the United Mine Workers. I have been for 25
17 years. I've worked underground for all the 25 years. And
18 I'm not a very good speaker or anything, but I've got enough
19 concern is the reason why I'd like to be up here and express
20 a little bit of it.

21 I, too, have a hearing loss already. And I hate

1 the thought of having to wear ear plugs (sic) or some device
2 to help my hearing the rest of my life. You know, have to
3 take care of it and keep it stuck in my ear and everything.
4 And, also, I hate the thoughts of having to work in a
5 working environment to where you have to wear ear plugs.
6 Because, here you are, you're handling them with your dirty
7 hands all day long, taking them in and out, replacing them
8 and everything.

9 And, ah, as -- it seems like, as the -- the years
10 goes (sic) on, the equipment in the mines, it keeps getting
11 louder and louder. We right now have scrubber miners. they
12 have two 30-horsepower scrubbers on them and both of them
13 run continuously. And, ah, we have two fans on our section,
14 because we have blowing ventilation. They're 50-horsepower
15 fans.

16 You can't hear one another talk anywhere on our
17 sections anymore. You can't communicate with people
18 anymore. And, ah, if somebody tries to get ahold of your
19 section with the phone, our phone is located down in our
20 feeder and it has a -- a warning light or a light, a strobe
21 light on it, and it has an alarm on it. But if you're not

1 close to it, you know, you can't see the light. You can't
2 hear the alarm or anything.

3 And then, if somebody happens to be by there that
4 does see it or hear it, they have to go down their intake
5 air -- ah, airway somewhere to another phone and talk with
6 people outside or another part of the mines because you
7 can't stand on the section and -- and, ah, communicate with
8 anybody.

9 So -- and, also, you know, our company, they don't
10 do the noise levels theirselves (sic). They hired some other
11 individual come in (sic). And like the other gentleman
12 said, we never hear the results from it. We don't know what
13 they are. So, we'd like for MSHA to do this. And then,
14 that way, they would give us reports back. We would know
15 what it is.

16 But, furthermore, we would like for you guys to
17 help us do something to make management do something with
18 the heavy -- the heavy-duty machinery that they're bringing
19 in the coal mines now to make it quieter. To where we don't
20 have to have -- ah, wear hearing protection all the time.
21 So we can communicate with one another.

1 So, that's pretty much all I've got to say. And
2 -- and, ah, I thank you very much for allowing me to speak.

3 MODERATOR THAXTON: Thank you, Mr. Sizemore.

4 Our next speaker is Jim Bias.

5 VOICE THREE: Jim Bias isn't coming.

6 MODERATOR THAXTON: Keith Casto.

7 (Continued on next page.)

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1 MR. CASTO: I wish you all a good morning, and
2 thank you for the opportunity to speak. My name is Keith
3 Casto, and that's K-E-I-T-H C-A-S-T-O, and I'm a member of
4 the UMWA. Our mine was recently bought out, and the new
5 company sent all of its newly acquired employees for a
6 physical.

7 To my surprise, the gentleman, after giving the
8 hearing test, opened the booth and told me that I had some
9 hearing loss in my right ear. He took the head phones and
10 held it to my left ear, and asked me if I could hear it. I
11 said, yes.

12 And then he put it against my right ear, and I
13 couldn't. I took the head phones and I put it back against
14 my right ear again, and I couldn't hear it. I did that
15 myself, because I couldn't believe that I couldn't hear
16 this. It was odd.

17 I have 21 years in underground mining, running
18 roof bolters, continuous miners, and just about any other
19 piece of underground equipment. I am concerned about
20 wearing hearing aides, and ear plugs are a must, but I am
21 against them.

1 We had a fellow miner running a operators side of
2 a Fletcher double-head roof bolter with no hearing
3 protection, while his partner was wearing protection, and
4 the unprotected miner heard the rib behind him break, and
5 ran. The rib was 33 feet long.

6 His partner never heard it, and he was wearing the
7 hearing protection, and he didn't hear a thing, but the
8 other one did. His partner never heard it, and the rib fell
9 upon the victim, and the gentleman is totally disabled now.
10 He didn't catch it, and he ran for it, but he didn't make
11 it.

12 There should be no reason why equipment should be
13 hearing friendly. When you buy a new car, there isn't ear
14 plugs or muffs laying in a front seat. If there were, you
15 couldn't hear a horn, or a warning, or the stereo. Let's
16 please keep it as safe as possible. I thank you. If there
17 is any questions, I'd be happy to address them.

18 MR. THAXTON: Thank you. The next speaker is Mr.
19 Stanley.

20 MR. STANLEY: Good morning. Thank you for letting
21 us address you this morning. I had very late notice on

1 this, and I am ill-prepared for this. I don't know if
2 anyone has noticed -- and I hope that you can hear me --
3 I've got my hearing aides in.

4 I've been a coal miner for about 16-and-a-half
5 years, and for one year this was on the surface.

6 MR. THAXTON: Excuse me, but could you state your
7 name and affiliation, Mr. Stanley.

8 MR. STANLEY: I'm sorry. Phil Stanley, P-H-I-L
9 S-T-A-N-L-E-Y, United Mine Workers of America. I didn't
10 have my hearing aides in when you were talking. Like I
11 said, I noticed that my hearing was -- I was reading lips a
12 lot, and I wasn't hearing bird sings anymore.

13 I think the first time that I noticed it the most
14 was with a lady in our church choir. I could see her, and
15 she could get up there, but I couldn't hear her. I hunted a
16 lot, and just like being in the woods, and I would hear
17 people, and I heard this deer coming around this way, but I
18 had never heard a deer in the woods in my life.

19 And I went to the company -- they had their own
20 clinic -- and they did a hearing test on me, and said that I
21 was okay. And I didn't take their word for it, and I went

1 to another doctor, and they sent me from there to a
2 compensation doctor, and I now have hearing aides.

3 And I am thankful that I do have the hearing aides
4 for hearing. I wish I had my hearing instead of the aides,
5 because I can't wear them very often. I can't wear them at
6 work, and you can't wear them around a lot of electrical
7 equipment, and you can't talk on the phone with them.

8 And you get under power lines -- and I tried to
9 kill a snake last year in my garden, and it wasn't there. I
10 thought I was being eaten up by a rattle snake, and it was
11 my hearing aide. The gentleman made a comment a while ago
12 about a man getting killed by not hearing a rib role.

13 I want to relate to you a story. A few years ago
14 I came to work early, and I went upon the number two
15 section, and caught the pinning up for another roof. I
16 worked on three, but I went to two, and I caught the pinning
17 up, and I came back outside at the regular start time, and a
18 friend of mine was sitting there.

19 He was the roof bolter on that section, and I
20 said, now, Larry, that's a good top up there, and he said,
21 oh, you're a good man, Phil. I said that's good top, and

1 there is about two inches or so of that rock that you had
2 better watch. It is sloughing off a little bit.

3 And at that time there was no regulation on us
4 wearing hearing protection. It had never been determined
5 that we needed hearing protection. At eight o'clock that
6 morning, Larry ate a pack of M&M's or peanuts. At eight
7 o'clock every morning Larry did that, and he put his ear
8 plugs in.

9 He was the only man there that wore ear plugs. At
10 one o'clock, a piece of that rock killed Larry. Now, I
11 don't know that he would have heard that if he hadn't had
12 his ear protection in. And right now, even though I have
13 lost a lot of my hearing, and I had to have hearing aides,
14 and if I had known at that time that the roof bolters and
15 the miners were doing this to my hearing, I would have wore
16 hearing protection sometimes.

17 And a lot of the times I wouldn't have, because I
18 had to depend on my hearing to save my live many times.
19 Even though it was bad. I would hear that rib crack that I
20 couldn't see that was behind me. Or I would hear that piece
21 of sand stone start to rip, and it gave me enough warning to

1 get out of there.

2 Or I would hear a timber break on a pillar
3 section, and it would tell me that something is going on.
4 Now, there is variances. If you put hearing protection on
5 or in, it changes the tones. That's how I tested my hearing
6 aides up enough. I put my hand over it, and it makes a
7 beep.

8 This makes a different type of beep. It is a
9 different frequency; and when you put hearing protection in
10 or on, it changes. It disguises sound. A lot of times you
11 are fooled, and you think you hear something that you don't.
12 And the other day my wife -- I came home from work, and I
13 she said, Phil, the baby bed, the side or the part that
14 slides up and down, it won't stay up.

15 And I thought, well, I had three options there. I
16 could go up there and I can tie the baby in. He is 20
17 months old, and he is wild as a buck. Or I can put the
18 mattress on the floor, and he will hit on that when he comes
19 out, or I can fix the dawg gone thing.

20 And I chose the latter, and I think that's what we
21 need to do. We need to quit disguising the problem, and fix

1 the problem. We've got Stealth Bombers out there that can't
2 be detected by radar, and surely a nation that can do that,
3 we can tone down the noise level of this equipment. Once
4 again, I thank you.

5 MR. THAXTON: Thank you.

6 MS. PILATE: I have a question.

7 MR. STANLEY: Yes, Ma'am?

8 MS. PILATE: I am the economist responsible for
9 doing the cost estimates, and I would like to ask you about
10 the audiometric test that you took and you paid for.

11 MR. THAXTON: Excuse me, but can you come back to
12 the podium, please.

13 MR. STANLEY: Would you repeat that, Ma'am?

14 MS. PILATE: I am the economist responsible for
15 doing the cost estimates, and I would like to ask you some
16 questions about the audiometric test that you took and paid
17 for yourself.

18 MR. STANLEY: I didn't pay for it myself. I hope
19 you didn't misunderstand. The company -- I went to the
20 company's -- they have their own clinic, and I went to that
21 and had a hearing test done. And they said that it was

1 okay, or they never in any way indicated that I needed
2 hearing aides. But I didn't take their word for it.

3 Then I went to another physician. I have
4 insurance. I mean, I don't know what it cost. They from
5 there contacted Workers Comp and they sent me to a
6 physician, who said -- or a Workers Comp doctor, who said,
7 yes, I did have a hearing loss due to the environment, an
8 occupational hearing loss.

9 I didn't mean to indicate that I paid for it
10 myself. But my insurance did, which I, in-turn, paid for by
11 my labor.

12 MS. PILATE: All right. Were you actually given
13 an audiometric test, the audiogram?

14 MR. STANLEY: Yes, I was.

15 MS. PILATE: Okay. How long did that take?

16 MR. STANLEY: Oh, Ma'am, I couldn't tell you for
17 sure. I went through a battery of tests. It probably took
18 me six months from the time they said that I had a hearing
19 loss before I got my hearing aides.

20 MS. PILATE: Okay. Thank you.

21 MR. STANLEY: You're welcome.

1 MR. THAXTON: Thank you. Our next speaker is
2 Bobby Little.

3 MR. J. STANLEY: Hi. My name is Joseph Stanley,
4 J-O-S-E-P-H S-T-A-N-L-E-Y. First of all, I would like to
5 say that I am not a professional speaker of any type and you
6 will realize that as I go along here.

7 I am a coal miner, and I work for a company called
8 Merribone Development Company. I am currently a health and
9 safety representative on my shift for the UMWA, and I'm glad
10 that I am here today also to speak on this subject. I work
11 on a preparation plant, and I have worked on a preparation
12 plant for almost 17 years.

13 I have six months underground experience, and I
14 have been to a preparation plant and I have been there ever
15 since. Mr. Ellison, who spoke first, his story is a lot
16 similar to mine. Our preparation plant was built in late
17 1968, early 1970, and when our preparation plant was built,
18 we also incorporated a lot of noise reduction items in our
19 preparation plant.

20 In particular a lot of rubber lining in the chutes
21 where the coal hits at transfer points, and the linings on

1 the chutes themselves that absorb that vibration. That is
2 long gone. When those products wore out, especially in the
3 later '80s, as those linings started to wear, we started
4 replacing those with metal, AR plate, which increased the
5 sound dramatically.

6 And as that wore out, we're going to ceramic.
7 We're currently using ceramic lined chutes in about 85
8 percent of our applications, and all are new chutes that
9 were installed last year. All of those were ceramic lined.

10 And ceramic, as I'm sure the majority of you
11 people are aware of, is a real hard compound that is similar
12 to glass, and it has unbelievable wear strength, but it also
13 reflects noise, just like steel would.

14 I am a preparation plant mechanic, and every area
15 of our preparation plant is out of compliance based on the
16 current standards. Some of our areas in my opinion are out
17 of compliance even with hearing protection, and I do wear
18 hearing protection, and have wore hearing protection
19 religiously.

20 But I also have been tested by Dr. Thoma in
21 Huntington, West Virginia, that was paid for and recommended

1 by my insurance company, because I went to the clinic also,
2 and they referred me to him. And I have experienced some
3 high frequency loss at the upper levels was their
4 terminology. But not enough to be awarded any compensation

5 Now, I don't want to lose my hearing, and I wear
6 my hearing protection religiously. My understanding of the
7 current noise reduction standard is that when they come in,
8 and I have asked that hearing levels be established or read
9 at our plant.

10 And when they came in and read those levels, he
11 explained to me that it is an average. In other words, if I
12 wear that device for six-and-a-half hours, it also takes
13 into account any break time or any off time that I have off
14 that floor.

15 Now, that's fine and dandy up until about three
16 months ago, when we got new management, and a particular
17 supervisor said that from now on you will spend a full shift
18 on that floor. We have a preparation plant where any part
19 of that plant can be taken down at any time.

20 You will have like four screens in a row out there
21 on one circuit, and they can take any one of those circuits

1 down, and I have to go out there and work in that noise.

2 Now, we are talking about a preparation plant that has noise
3 levels in excess of 130 in a couple of areas.

4 But all, all floors that we work on are at least a
5 hundred. So, if I add the hearing protection with the
6 number 28 ear plug, I'm right at borderline. Now, I don't
7 know if you guys understand how loud this is or not. A
8 250cc dirt bike motorcycle six feet away from you at full
9 throttle produces 82 decibels.

10 Now, that means that I'm working within six feet
11 of a motorcycle running at full throttle. That's with ear
12 protection in. It's just too loud, and it is getting louder
13 and louder. Now, if I have that average, and my
14 superintendent is going to make me stay out there that full
15 eight hours -- before they didn't mind you taking a break.
16 You could stay out there a couple of hours, and then they
17 would let you come in.

18 But now all of a sudden they have taken this hard
19 nose attitude that you are going to stay out there for the
20 full shift, except for your lunch, and they put the watch on
21 you for your lunch hour. That's fine and dandy, but that is

1 going to put us out of compliance.

2 What we are going to do is we are going to have a
3 whole industry out of compliance, and how are we going to
4 comply with that? These people are right. A lot of these
5 people do not wear hearing protection. A lot of people
6 can't wear it. It is like a phobia or something.

7 It's like if I am working next to a piece of
8 equipment, and I can't talk to this person right here at
9 full voice, and if he can't hear a word I'm saying unless I
10 am within 12 inches of him, how am I supposed to communicate
11 with him?

12 I'm changing out frames, and I'm changing out --
13 I'm using cutting and welding equipment. We are pulling
14 major pieces of equipment. We are pulling decks out twice
15 the size of that table that weigh thousands of pounds, using
16 fork trucks, and using chain ratchets, and using chain
17 hoist, and I'm working right beside a man who cannot hear a
18 word that I'm saying.

19 We currently requested -- we have two-way radios
20 that can be only worn by that working group, and no one else
21 can interfere. They are absolutely right. When they tried

1 to page you in the plant -- there is lots of areas in the
2 plant that you can't even hear.

3 But what is frightening is when on a Sunday, which
4 I am on a 4D5 maintenance crew, and I'm in the area of that
5 phone, of that speaker, which is 24 inches in diameter, a
6 speaker phone 24 inches in diameter in several areas of our
7 plant.

8 On a Sunday, you won't believe how loud that is.
9 When that plant is not running, you cannot believe the
10 volume that that speaker puts out. But you can't even hear
11 them page you when that plant is running. If the people --
12 I wear my hearing protection, but I know that a lot of
13 people don't.

14 I know people that I work with every day that do
15 not wear it. I know those people have hearing loss. You
16 see those people reading your lips. When we do get shop
17 time, when the plant is not actually broken, and we go out
18 to the shop to fabricate a pipe, or to make up a guard, or
19 something along that nature, then you can see that those
20 people can't hear you.

21 If you're not looking directly at them, and when

1 you address them, it just goes by them, or they catch a part
2 of it. They will say, oh, what did you say. They have
3 hearing loss. A lot of our people at our operation have
4 hear loss. Compensation doesn't cover hearing loss.

5 Worker's Compensation, they will give you a set of
6 hearing aides, but that doesn't cover any loss, because you
7 have to be over 50 percent.

8 You have to be totally disabled because of that
9 loss in order to collect from compensation; and with the
10 rules and the regulations of West Virginia's compensation
11 system now, I don't expect anybody to get anything. But the
12 UMWA has given you written comments on what they would like
13 to see in this regulation, and those are the comments that
14 myself and I'm sure all the other gentleman from the UMWA
15 would like to see adopted.

16 Now, maybe you can't do them all, but I think we
17 can do a lot better than what is in this proposal. He's
18 right. When you go buy a new car, or a new truck, or a big
19 diesel off-road piece of equipment -- you see these tractor
20 trailers driving around every day, and you don't see hearing
21 plugs on the front seat, or a pair of ear muffs.

1 Maybe we can't do that, but we can do something
2 that is a lot better than what is proposed, or what we
3 currently have. There is a lot of pressure -- I don't know
4 how many non-union people are here to comment on this, but
5 there is a lot. I was a non-union employee for about 13
6 years.

7 Let me tell you, if you're non-union, you don't
8 ask questions about hearing. You don't tell them that you
9 need hearing aides or do that. You go out there and you do
10 your job, and you don't have the right to stand up here and
11 ask like a UMWA employee does.

12 You have a company appointed, Miner's
13 Representative, in a non-UMWA job, in a non-union job. I
14 will tell you that for a fact, because we had it for 13
15 years. Miner's Representatives at a lot of non-union places
16 don't exist other than somebody that they want the company
17 to go with the inspector when they come, and that will tell
18 the company's side of it, and not the working man's side of
19 it.

20 We have the right to our contract, and through
21 that act that the UMWA is not afraid to ask be enforced to

1 protect these miners, and hearing loss, and hearing
2 problems, and noise, and the increase in the noise level of
3 production, of all production equipment -- underground and
4 on the surface -- is a problem.

5 When that coal is hitting against a rubber lined
6 chute, it doesn't make as much noise as when they put that
7 AR plate in there. And underground you have a lot of
8 transfer points, where that big rock, or the byte patterns
9 are a lot bigger than they used to be because they are
10 trying to eliminate the fines.

11 That means bigger material, and the larger the
12 material, the harder it hits against that area, because we
13 are getting it at the prep plant. The same thing. But I
14 wish you would adopt the written comments that the UMWA has
15 submitted to you, and I wish that if you can't do that, that
16 you would do much more than you do in the current proposed
17 regulation.

18 And I agree that \$9 million is a pretty reasonable
19 cost to enforce this. I think that's the number that I read
20 to implement this that it would cost. I think we could do a
21 lot better than that with a lot less than \$9 million. But

1 if it takes more than \$9 million, hey -- my brother. This
2 is my brother who just talked.

3 He's right. He can't hear. We got hunting with
4 him, and he doesn't hear the things that I do. He has great
5 eyesight and stuff. If you're not looking at him, and if he
6 doesn't have those hearing aides in, a lot of times he can't
7 hear what you're saying.

8 Me and him rode up here together in the car this
9 morning. We live in the same town. If I turned the radio
10 on, he couldn't hear anything I was hearing, because the
11 background noise was interrupting it.

12 But we need to address this situation. You've got
13 a whole group of employees now. The average miner -- UMWA
14 miner -- is approximately 43 years old now. All of us are
15 going to be retired in probably or hopefully within the next
16 10 years or so, and all of us are going to be leaving out of
17 here with hearing loss.

18 We're going to have a whole work force -- and I'm
19 sure that it's just not in the mining industry, but it's in
20 other industries also, because they are just not taking the
21 time to make the noise reductions on this equipment that we

1 know they can. Thank you very much.

2 MR. THAXTON: Excuse me. You said that you didn't
3 get Worker's Comp and your brother did?

4 MR. J. STANLEY: That's correct.

5 MR. THAXTON: Okay. Thank you. The next speaker
6 is Brent Dillon.

7 MR. DILLON: Good morning. I thank the panel for
8 letting me speak. My name is Brett Dillon, and that's
9 B-R-E-T-T D-I-L-L-O-N. Okay. We have before us a proposed
10 noise standard. I support what the panel has done, but I
11 also totally support the comments the UMW has submitted to
12 the panel.

13 I think there can be more done than what the panel
14 has recommended. I represent the UMWA, and I work
15 underground, and have been an underground miner for 21
16 years. This is not my first time speaking before a panel.
17 I just see new faces, and just a different panel, and just
18 different items to talk about.

19 The thing that really concerns me is
20 administrative controls and engineering controls. To me,
21 engineering controls can be done; it just may cost a little

1 more. Administrative controls is real simple. If you're
2 wearing hearing aides, and it is not enough to cut the noise
3 down to keep from harming your ears, then you stick a set of
4 ear muffs on over the ear plugs.

5 Well, I'm going to tell you that I can't wear ear
6 plugs. They hurt my ears, and they cause my ears to ache,
7 and they cause me to break out, and have sores on my ears.
8 I can't stand to touch my ears after wearing ear plugs for
9 only a few minutes.

10 I know you guys probably are in an office most of
11 the time, but have you ever heard of fluorescent lights
12 start buzzing? Does it really aggravate you? Well, we have
13 to live with that day in and day out because our ears buzz
14 from working around noise.

15 I went over to the doctor over it, and I filed a
16 claim for occupational hearing loss, which is caused
17 occupational illness. Well, I was checked by the doctor and
18 the audiologist, and they said, yes, I do have a hearing
19 loss, but it's a non-compensable hearing loss.

20 And that means not even hearing aides. But yet if
21 there is any kind of background noise going on or anything,

1 and my wife or my children speak to me, I can't hear them.

2 I said, huh, what did you say. Excuse me. Which I do that
3 pretty regular.

4 I mean, it's easy to hear in here. We've got
5 speakers and everything, but it's not always that way.

6 Another thing about wearing ear plugs or ear muffs is that I
7 work underground, and I know a couple of gentleman spoke
8 about being able to hear what is going on.

9 Sure, there is always noises going on. There is
10 pieces of machinery running, but if you have ear plugs in,
11 or ear muffs, it is going to cut down some of that sound.
12 And you can't extinguish the difference from a piece of
13 machinery approaching you as the same as a piece of
14 machinery running not far from you.

15 So, if you can't hear that machine approaching
16 you, then you may not be able to get out of the way, and
17 they may not see you, and they may run over you. Or if you
18 are a roof bolter, or a miner operator, or something like
19 that, you need to be able to listen to what is going on.

20 You need to be able to listen to your roof. A lot
21 of times your roof will pop, crack, and it gives you

1 warnings of what is about to happen. Sometimes you are
2 about to have the roof fall, or a rib roll, and if you can't
3 hear it, then, yes, you can be killed or seriously injured.

4 Myself, I like to hear what is going on so that I
5 know when to get out of there. Again, I would like to thank
6 you for the time, but I don't think that the proposed
7 standard is enough. I think we could go more on the UMWA's
8 proposal and their comments. It would help us a lot more.

9 There is nothing wrong with companies making a
10 profit. If they didn't make a profit, a lot of us wouldn't
11 have jobs at all. So, yes, I want them to make profits.
12 But I don't want them to make enormous profits at our
13 expense. Sure, they can spend a little bit of money to take
14 care of us while we're making money for them.

15 But the plan is now to produce more, and make more
16 money, and the heck with the workers. You know, we are
17 easily replaced. We are just a number, and as time goes on,
18 more and more we are just a number. I thank you very much
19 for your time.

20 MS. PILATE: I have a question. You spoke of
21 having an audiometric test with an audiogram?

1 MR. DILLON: Yes, Ma'am.

2 MS. PILATE: How long ago was that?

3 MR. DILLON: Approximately five years ago.

4 MS. PILATE: Do you remember how much it cost?

5 MR. DILLON: No, Ma'am, because I didn't pay for
6 it. It was paid for under Worker's Comp.

7 MS. PILATE: Do you remember how long it took?

8 MR. DILLON: It probably took me two hours to go
9 through it.

10 MS. PILATE: Thank you.

11 MR. THAXTON: Thank you, Mr. Dillon. The next
12 speaker is John Poindexter.

13 MR. POINDEXTER: Good morning. My name is John
14 Poindexter, and that's J-O-H-N P-O-I-N-D-E-X-T-E-R. I'm
15 here to speak on a small aspect of the noise of a coal mine,
16 which is the long wall. We have two at our coal mine. The
17 noise levels there have increased three times greater in the
18 last 15 years due to automation and different length of your
19 plow panels.

20 We have a computation that has three 200
21 horsepower pumps that provide the pressure for the face.

1 These pumps are as we call, they go on stroke. They are set
2 for a specific pressure each, and the three pumps will vary
3 between five to eight seconds constantly with this high
4 noise.

5 10 years ago this pump station was located at the
6 mouth of our sections and away from the long wall face. So,
7 now they are moved within the approximate vicinity, a
8 hundred feet from the head operator of the long wall, where
9 he sits in a compartment, and it is an open compartment,
10 with a canopy.

11 He has a belt line that runs right beside of him
12 constantly, with metal splicers coming across the rollers.
13 A hundred feet from him, he has a stage loader and pressure
14 250 horsepower motor, and which is constantly on a whine.
15 The stage loader has a chain approximately 300 foot long
16 that runs constantly, and that is a metal to metal sound.
17 If you have never heard that, it's quite loud.

18 He also has to monitor all of the phone calls from
19 the surface, which is also located in his deck. He monitors
20 all calls that comes from the face located in his deck. The
21 tail piece operator is closer to the sound of the stage

1 loader, because he is at the stage loader itself, where it
2 dumps on the belt line.

3 He hears this noise. Anyone in the jack line, we
4 have a head jack setter, and a tail jack setter. We have
5 three mechanics in the line, and myself, which I am
6 presently face fire boss. We have a face conveyor and plow
7 chains that are approximately 510 meters long each, and that
8 are constantly running.

9 This is a metal-to-metal sound. We're constantly
10 subjected to the falls of the roof behind the shields, which
11 at any time the shields move, the roof will cave. You have
12 metal gilding due to pressure, which is just a sound of a
13 sledge hammer hitting metal.

14 You have self-contained units, which are SCUs,
15 stationed on every shield in the face. They will vary from
16 129 to approximately 159. These have audio warnings on
17 them, and at any time that shield for any purpose moves,
18 even to just push the face, this high pitch from this
19 audible warning is activated.

20 And that whole set of shields, which can vary from
21 20 to 25, if you are in this area, you are constantly

1 subjected to that noise. The start up of the long wall --
2 any time it is shut down for any reason, and starts back up,
3 has a high pitch warning sound.

4 It is a signal that goes through all the face
5 phones on the line to the end of the line, which is five of
6 the loudest sounds you probably will ever hear. Everyone on
7 the long wall has the opportunity for any type hearing
8 protection that is available. Most of them don't wear them
9 for the same reasons that the other members of the nine
10 workers have stated.

11 The ones that do wear them have become so adapted
12 to the environment that they can't hear the audible warnings
13 with those on. Any head operator at the coal mine, you can
14 sit down and attempt to have a conversation to him, but his
15 famous words are, "what did you say", because he can't hear
16 you.

17 And like the rest of these people, I encourage you
18 to look at the UMWA's proposal. I have been associated on
19 this long wall for the past 18 years. To my knowledge, I
20 have only saw one hearing test conducted. It was at the
21 stage loader itself, and when I asked the gentleman how much

1 it was, he said it was too high. No numbers. Just too
2 high.

3 So, the problem is there, and I for one just feel
4 that it is being covered up, because as I said, the noise on
5 these long walls, this noise level would change dramatically
6 depending on the production, and the more production, the
7 more noise. So, I thank you for your time.

8 MR. THAXTON: Mr. Poindexter, I have one question
9 for you, please. You mentioned the numbers of 129 to 159 as
10 the readings on the shields with the self-contained units.
11 Was that pressure or was that dba?

12 MR. POINDEXTER: Are you talking about the length
13 of the face line as being 129 to 159?

14 MR. THAXTON: Yes.

15 MR. POINDEXTER: That would be the difference in
16 the length of your long wall face.

17 MR. THAXTON: Those were the lengths that you have
18 encountered at your particular long wall?

19 MR. POINDEXTER: Right.

20 MR. THAXTON: Okay. Thank you.

21 MR. J. STANLEY: This lady, the economist -- I

1 have some information, I believe, for the economist who said
2 she was in charge of the economics of it. Pertaining to the
3 audio test, and the --

4 MR. THAXTON: Excuse me, but please state your
5 name, first, for the record?

6 MR. J. STANLEY: Joseph Stanley, and I am with the
7 MWA, health and safety, Merribone Development Company. I
8 can tell you that Harts Clinic, Valley Health Systems, in
9 Hamlen, West Virginia, charges approximately \$190 to test
10 you, and do an audio test and a black lung test.

11 Now, what portion of that is devoted to the audio,
12 I'm not sure, but that includes x-rays, a breathing test, an
13 examination by a doctor, and the trip into the booth for the
14 hearing test. That may be helpful.

15 MR. THAXTON: Okay.

16 UNIDENTIFIED PERSON: I wonder if I could put my
17 name at the end of the list here before we break.

18 MR. THAXTON: Yes. We'll come back to you then.
19 The next speaker on the list is Jackie Cook.

20 MR. COOK: Good morning, Board. I want to thank
21 you for the opportunity to be able to come up here and speak

1 before this board. My name is Jackie Cook, J-A-C-K-I-E
2 C-O-O-K, and I am presently employed at a coal mine in Lynn
3 County, which is Number 16 Long Branch Mining, small one
4 section contract mine.

5 I started in the mines on September 29th, 1972. I
6 have yet to have the first -- any part of any kind of the
7 noise sound device run in the industry. I have served on
8 several different jobs in the industry. I have had
9 positions such as general inside assistant mine foreman, and
10 down to the coal hog operator, general labor, whatever.
11 I've did a lot of jobs.

12 But I have yet to see MSHA or anyone to do that,
13 or to make any kind of evaluation or anything on any type of
14 noise. But when I started in the mines in '72, I decided
15 that I was going to move to a job closer to home in '74, and
16 I quit that job that I went to in Allen Creek, and went to a
17 job in '74 in Bethlehem.

18 Well, that mine worked six months and laid me off.
19 They had a lot of labor problems and stuff, and they shut
20 the mine down. Well, when I was laid off from that mine, I
21 had only been there a short period of time. We are talking

1 about 29 months here for a total of underground mining
2 experience.

3 I go to another mine, or a couple of mines as a
4 matter of fact; Westmoreland Coal Company, a small contract
5 mine that Doug Bill owned, and I couldn't pass the physical
6 examination due to a high frequency loss of hearing. Well,
7 I thought the company was giving me the run around with the
8 short period of time that I had in the mines.

9 So, I go to a Dr. Thoma in Huntington, an
10 audiologist, to confirm that, and I also had those exams run
11 which my insurance paid for. I have no knowledge of the
12 costs of those. But I take from that then that my career in
13 mining is over with. So, I go back to the company that I
14 was presently employed for to another mine site to talk to
15 the personnel man about filling out some disability papers
16 and getting on disability.

17 Well, the man was Mike Vickers, and he said, well,
18 we don't want to do that. Let's fill out an application for
19 this new mine that we've got up the road up here. I said,
20 okay, Mike, I'll do that.

21 I filled out the application, and they sent me for

1 a physical examination. They never gave me any hearing
2 exam. From that date to this, either the superintendent at
3 that mine, or the division manager or somebody, has either
4 owned or operated every mine that I have went to since. So,
5 I have yet to take a physical examination on any kind of
6 hearing exam.

7 I do have a high frequency loss of hearing, and I
8 took it before the Compensation Board, and I was denied any
9 right to any claim. It wasn't bad enough to collect any
10 benefits on. But, you know, even the present thoughts we
11 have are not working at all.

12 But the proposals that we have before us now that
13 MSHA has approved won't work neither, because I did serve as
14 a mine manager, and I know what they do and what they don't
15 do. Even just to shift off a little bit. They switched a
16 dust sampling over to the mine sites, and we stayed off
17 compliance on this, and we are off compliance right now.

18 But I can also show you violations here that was
19 wrote, where our mine managers tampered with the dust
20 samples. What readings they took in was bogus readings, and
21 violations were wrote and prove in fact what I'm saying, and

1 today they are taking dust samples still yet, and they are
2 still tampering with them.

3 And they have not done learned how to work the new
4 electronic machines to get by with the dust samples today.
5 The only true accurate readings we can get is when MSHA
6 comes in and does them, and every time they come in and do
7 them, we are out of compliance.

8 So, this noise standard is a fine standard to go
9 by, but it still is a little bit lenient for the coal
10 operators to have to live by, because there is things --
11 with my experience that I have had in management and in the
12 union, too, that can be done to cut those noises down by
13 even cutting some old pieces of belts that are laying around
14 and mounting them across the top of those machines and
15 stuff.

16 It is not no great expense to cut noise down on
17 equipment. But it is a serious problem, and getting back to
18 what I was going to talk about here, anyhow, I have several
19 friends that is retired from the coal industry. You know,
20 most of them retired at age 55.

21 One of my buddies is 65 now, and I have been

1 hunting and fishing with him for the last 24 years. Along
2 about when he got 53 years old, he started talking to me
3 about his hearing problem. Well, as time went on, it got --
4 his condition got worse.

5 Well, this year, come hunting season, he comes to
6 me and wants to know if I know of anybody that can go
7 hunting with him so that he will be able to have a view of
8 the turkey while he's calling. People's are not even able
9 to hunt after they spend 20 to 25 years in the mines.

10 I mean, it pretty much destroys a lot of their
11 enjoyment that they get out of life because of the noise
12 that we have in the industry today, and because of the
13 hearing losses that it has caused. I mean, you take someone
14 like me, and after 28 to 30 months, they have a high loss of
15 hearing, and the doctors even said that it was due to
16 industry related. I've got papers, you know, on that to
17 back me, which I should have brought with me.

18 But the union's -- the UMWA's proposal that they
19 have laid before you all to go with the one that you got
20 that will keep it in MSHA's hands, and see that it is
21 enforced, would be the best plan that could be brought

1 forward for any industry.

2 Because you cannot rely on no company to enforce
3 any part of any type issue, because like some of the other
4 brothers said here this morning, when you go to work for a
5 company this dam time, and I have worked for several
6 different companies, you are just a number working in this
7 company.

8 And if you can't no longer produce and perform,
9 and in the capacity that they want you to, they are figuring
10 out a way to get rid of you. If you miss too much work,
11 they are figuring out a way to get rid of you, and due to
12 health conditions, or due to hearing loss, or whatever.

13 But also at the mine site that I work at, we've
14 had six accidents, which is on the records at MSHA, due to
15 roofs falling out. All of our employees do wear ear plugs,
16 because all of our equipment is out of compliance on noise.
17 Without question, it is all out. They all wear ear plugs.

18 All right. We are putting up 10 to 12 foot point
19 anchor bolts, and it was a shell top before we can get into
20 sand rock top to hold that. Well, they have to wear their
21 ear plugs to run a roof bolters, and to run the miner, or

1 whatever job they do. In my job, I run a coal hauler, and
2 it is the most loudest piece of machine underground.

3 But these accidents that we've had, these five or
4 six accidents that we've had in the past 18 months, is due
5 to a piece of slate falling out between the bolts and
6 hitting these individuals. If they hadn't had their ear
7 plugs in, there is a possibility that they could have heard
8 that rock breaking, and started to fall, and moved before it
9 hits them.

10 Here just recently a mine inspector, Danny
11 Meadows, was there making a run, and a superintendent, and
12 myself, and the mine inspector was traveling down an intake
13 airway, and a piece of slate was loose hanging out there,
14 and I could see it.

15 The superintendent had his ear plugs in, and he
16 didn't hear it or see it, and I hollered and asked him to
17 move, and if it hadn't been for me seeing and asking him to
18 move, he would probably not be working today. But those ear
19 plugs, I brought them with me, and if any of you all would
20 like to try and set them on, and see what it feels like, and
21 go to work at four o'clock in the morning, and start working

1 at 6:00, and get off at 4:00 in the afternoon, and wear then
2 10 hours a day, see what it is like.

3 I've got several pair with me back here if you
4 would like to try them. I know that I've had office jobs,
5 and it didn't bother me to put a man in there doing this
6 stuff because I have been in the office. I was only
7 underground two hours a day when I was sitting in the office
8 for an eight hour a day job. I was sitting in the office
9 for six hours a day doing paperwork, and that didn't bother
10 me a bit to put that man in there doing it.

11 But when you get in there and actually do or
12 perform these duties, and get involved on what is going on,
13 and have to wear these ear plugs day in and day out just to
14 survive so you can have a little bit of hearing so you can
15 go home and hear a little bit and watch t.v. or whatever, it
16 is pretty much ridiculous that we have been so lax on it
17 over the past 24 years.

18 It's a serious problem, and the UMWA has come up
19 with some good things on the paper here, and if you all
20 would accept that, then turn it back go MHSA, and let MHSA
21 take control of it, and see that it is enforced, it will be

1 of great benefit to all the employees in the industry today.
2 And I want to thank you again for giving me the opportunity
3 to speak.

4 MR. THAXTON: Do you have any documents that you
5 would care to leave with us?

6 MR. COOK: I'll make you copies of them if you
7 would like to see them, on the violations and the illegal
8 things that the companies do. I can make you copies of
9 them, but I wouldn't give you my only copy.

10 MR. THAXTON: I don't want to take your only copy,
11 but if you care to make copies of those and present them to
12 us, we would be glad to accept those then.

13 MR. COOK: Okay. Thank you again.

14 MR. POWASNIK: Mr. Cook, you could leave the
15 hearing protection if you would like.

16 MR. COOK: Okay.

17 MR. POWASNIK: You can submit that into the
18 record.

19 MR. COOK: Okay. This is the necklace type
20 hearing plugs, which the brother over here spoke about
21 earlier that works real good, and the best there is actually

1 to use. But if you use this type here, and if you're
2 working in dirt, and get grease on your hands, you twist
3 that up and put it in your ear. But then you have got your
4 ears full of dirt, and you have to go and get them flushed
5 out about every six months with this type here.

6 This type here does not block out any noise. But
7 this type here, the company I work for, and at the mine site
8 that I work at, they will not furnish them because they are
9 pretty expensive. So, I've got a guy I know at Madison
10 Ready-Mix in Madison that furnishes these for me.

11 MR. THAXTON: Thank you. Okay. Our next speaker
12 is Gary Trout.

13 MR. TROUT: Good morning. My name is Gary Trout,
14 G-A-R-Y T-R-O-U-T. I'm a health and safety representative
15 for the United Mine Workers of America. I would like to
16 take this opportunity to thank the panel members for
17 allowing me to express my personal opinion on the proposed
18 standards, and so as not to take up too much of your time,
19 I'll try and be as brief as possible.

20 An overall evaluation of the proposed standards
21 indicates a definite improvement over the noise program.

1 Some of these improvements include the following. The
2 proposed rule establishes an action level on a time based
3 average exposure above 85 dba, which would require the
4 operator to provide training to the exposed miner.

5 Also under the proposed rule, mine operators must
6 monitor the exposure to noise, and inform exposed miners
7 annually if they are above the action level. Another
8 improvement under the proposed rule is when the miner's
9 exposure to noise exceeds the permissible exposure limit.
10 The operator must use all feasible engineering and
11 administrative controls to reduce the miner's exposure to
12 the permissible exposure limit.

13 Also at the time the weight average of an eight
14 hour shift will not affect, or not be affected by the
15 extended work shifts, since the noise exposure will be
16 measured for the entire shift. These are improvements which
17 will help the miner.

18 Although the proposed rule appears to provide
19 clear improvements over current noise standards, much of
20 this is subverted by the lack of sound agency monitoring and
21 enforcement requirements. As I stand before you today, I

1 can honestly say there are some operators who will go to
2 great measures to improve the noise exposure for their
3 employees because they care about safety in the work place.

4 But unfortunately there are some operators who
5 just don't care. The most damaging aspect of the proposed
6 rule is the fact that it is performance oriented, or in
7 other words, self-enforced by the operator.

8 The operators will be solely responsible for
9 establishing a system of monitoring noise, and taking
10 appropriate action under the rules whenever they find
11 themselves out of compliance. The proposed rule of
12 monitoring noise is an invitation to abuse.

13 You can compare this rule with the regulation
14 covering the monitoring of respirable dust, and we all know
15 what happened there. Furthermore, MSHA's rule will be
16 limited to taking their own measurements whenever they deem
17 it appropriate, and checking the operator's records at the
18 mine site for compliance.

19 I do not foresee some operators admitting they
20 have a noise problem, and self-imposing costly engineering
21 controls. Therefore, I feel that the proposed rule should

1 require MSHA to do all noise sampling, and again I thank you
2 for your time.

3 MR. THAXTON: Okay. Thank you. I think we will
4 go back now to Mr. Jim Bias.

5 MR. BIAS: My name is Jim Bass, J-I-M B-I-A-S.
6 As some of you here know and realize, I've got a big mouth.
7 There is a lot of people though out there today that can't
8 hear even my big mouth, especially some of the people that I
9 work with.

10 I have been working in the underground coal mines
11 since 1974. I've held jobs from a general laborer to a
12 central control operator at a prep plant. So, I've had
13 experience in different atmospheres of noise, from long wall
14 machinery, to -- and as the gentleman was talking about
15 there -- the vibrators in the prep plant.

16 I would like to touch on some things that my
17 friend touched on as well, and I'd like to explain just a
18 little bit. How many of you all here on this panel are from
19 West Virginia?

20 (A raise of hands.)

21 MR. BIAS: Just one? Well, the rest of us in here

1 and you as well know about the self-auditing bill that just
2 came up in our legislature to let companies and chemical
3 companies audit themselves, and say, well, we've messed up,
4 and so I slap myself on the wrist. I'm good. I don't have
5 to report to nobody.

6 Well, some of the proposals here -- and some of
7 these coal operators that are even represented here today,
8 and that may be speaking this afternoon that that's what
9 they want. They want MSHA out of the way completely, and
10 they don't want them to have any say so at all in the
11 monitoring, and they will take care of it themselves.

12 So, if they are out of compliance, who are they to
13 report to? Their President? Their CEO? So, they are out
14 of harm's way there. So, in this the mine operators must
15 monitor some of the good things that are needed in this
16 program that are being proposed, and that the mine operators
17 must monitor exposure to noise, and inform exposed miners
18 annually.

19 And it is above the action level, and under what
20 some of the operators want MSHA to do is to not even do
21 this, and not even tell the individual that he is exposed to

1 higher than 90 dba's, and the proposal that is here now that
2 should be enforced and hopefully this panel will take into
3 consideration that it would be -- that the noise exposure
4 level would be dropped to 80 or 85 dba's that you are
5 required to be exposed to.

6 Also, one of the things that is negative about
7 this, and that you hear about, is that they said, well, some
8 of the smaller operators need to be phased in at a later
9 date because of the economic values to that operation, and
10 they can't comply all at once.

11 A hearing loss is a hearing loss, and no matter if
12 it is to a small operator, or to someone that works for a
13 larger operation, because as well as you, and myself, and
14 others in here, we would like to hear our grandchildren say
15 their first words, or speak to us and say papa, or mama. We
16 want to hear those words.

17 We don't want to have to be deaf and have to rely
18 on as the brother was talking about, on someone else helping
19 them to hear while they are hunting. I like to hear my
20 grandchildren, and I don't have any grandchildren yet. One
21 of these days, lord willing, I'll have grandchildren.

1 But I want to be able to hear my grandchildren's
2 first words, and I, too, have a hearing loss of the high
3 frequency range. And people today in these proposals that
4 the operators want for them, is or them to -- their bottom
5 line is the bucks, is the dollar bill.

6 Under these proposals the operators will no longer
7 be required to report the results of their noise surveys to
8 MSHA. Instead, a record is maintained at the mine site, and
9 made available to the agency's authorized representatives;
10 and this is a reflection to MSHA with some of the inspectors
11 that they have.

12 Some are not fully trained in all the records that
13 are available that they are asking for. Sometimes from the
14 studies that I have done at different operations, and
15 talking to different miners' representatives, a lot of the
16 authorized representatives of the Secretary do not know all
17 the records that they are required or have access to.

18 So, this is one proposal there that needs to be
19 stricken out just so the operators can keep hid all the
20 higher exposure levels. Like the gentleman was talking
21 about the face conveyor chain on a long wall. It is a

1 continuous running piece of machinery.

2 It runs in some places 24 hours a day, six days a
3 week. There is a constant grinding of metal to metal, and
4 pumps running constantly 24 hours a day, and exposure levels
5 to different types of noise, and crushers that are at the
6 head gate area of these long walls; and belt tails that
7 these long walls were -- the belt line that has mechanical
8 splicers in them continually come and run continually
9 through this tail piece, and making noise.

10 Continuous miners at the mines where I
11 particularly work at Eagle and Energy, and it is a
12 subsidiary of A.T. Massey. But we are a U.M.W.A. mines, and
13 I thank god for that. But we have Joy miners, and I myself
14 back in the early '80s contacted the Jeffrey Corporation
15 about their noise level of their miners, and how the noise
16 level got louder, and louder, and louder.

17 There are standards out there that can be
18 engineered into these mining equipment, especially the
19 continuous miners and the shuttle cars, and these long wall
20 machines. Even the prep plants. There are engineering
21 standards out there today that can be met if they are made

1 or enforced under some of the new proposals that will be
2 there.

3 The continuous miners, the 14 CM and 15 CM Joy
4 Miners that are at my operation where I work, they have a
5 scrubber that is set at 6500 CFM blowing out air of the back
6 of that machinery, and it has a 30 horsepower motor on it
7 that runs this fan.

8 So, you can imagine -- and someone -- Brett there
9 referred to a buzzing of lights that you hear in your office
10 or wherever you are at. Well, you think about standing
11 behind this continuous miner there with a remote control in
12 your hand to operate that machine, and it is making this
13 noise approximately seven hours out of the eight hours that
14 you are there.

15 And hearing protection that you have that Jackie
16 presented to you there, some work, and some do not. I for
17 one have some that I have on my hard hat and that I have
18 since taken off, and went to a different type and that just
19 pull down.

20 They were the muff type, and they worked pretty
21 good, but a lot of people do not use these because of the

1 inconvenience, and because of health hazards, and there are
2 health hazards in some of these pieces of hearing equipment.
3 But the things that can be done, and should be done, and
4 should be recommended by this panel you have heard here
5 today.

6 And they are also in written proposals from the
7 United Mine Workers and our people. So, I would like for
8 this panel to think about, if nothing else, if nothing else
9 about how and why we should allow a coal operator that was
10 entrusted to sample the respirable dust standards in the
11 industry for approximately 25 years, and in that 25 years
12 they messed it up, and cheated, and lied.

13 So, you think they are going to say, well, now we
14 are going to be very honest with you; and I want to read you
15 something here if I may. Under these proposals, there is 14
16 words, 14 words that is used to cover the whole thing.

17 And it says, "Operators shall establish a system
18 of monitoring which effectively evaluates each miner's noise
19 exposure." That's all. The rest of them -- now, when you
20 talk about dust standards, you've got -- well, I will just
21 read some of it. "Compared to the regulations covering

1 monitoring respirable dust, four pages on when, on how,
2 under what conditions, and who does the sampling, all of
3 these are for respirable dust."

4 And the there is five pages on the sampling
5 method, and on how to take the samples and things that you
6 should do. Now, the proposed rules on monitoring noise is
7 an invitation that has been perpetuating fraud for 25 years.
8 So, today I not only ask that you protect my hearing, and
9 have the new laws, proposed laws to be enforced, and
10 enforced stringently so that I would have the opportunity,
11 like you will, to hear your grandchildren say, hi, mama, hi,
12 papa. I love you, mama. I love you, papa. When you can't
13 hear that, it's a word of difference. Thank you very much.

14 MR. THAXTON: Thank you. We have one additional
15 person that has signed up, Mr. James Linville.

16 MR. LINVILLE: My name is James Linville,
17 J-A-M-E-S L-I-N-V-I-L-L-E. I am representing the UMWA, and
18 I am the Chairman of the Mine Health
19 and Safety Committee on our job. I work for Hobet
20 Mining in Boone County, West Virginia. I have worked for
21 them for approximately 15 years.

1 I started my mining career working construction,
2 and later I worked for Pittston Coal Company in a
3 preparation plant, and I held positions as a welder, a
4 breaker/builder operator, and I am currently holding a
5 physician as a welder for Hobet Mining.

6 I have a hearing loss. I wear hearing aides. I
7 can't begin to tell you how much of a discomfort that is,
8 and how much embarrassment I have experienced over the years
9 of not being able to hear a conversation, or how many times
10 I have asked someone to repeat what they have said.

11 It has caused much conflict between my wife and I.
12 She is a very special lady. She has stayed with me for 30
13 years, and I guess she sees some good in me. But we have
14 had a lot of conversations about my hearing, and the
15 inability to hear her, and for a while she thought it was
16 the fact that I didn't want to hear her or whatever, but it
17 wasn't that.

18 I have difficulty listening to a radio, especially
19 with background noise or following conversations on the t.v.
20 or on the movie screen. I wear hearing aides when I am off
21 work, and that helps quite a bit. I went to my family

1 doctor, and had a hearing test done, and after it was
2 determined that it was work related, and I filed a Workmen's
3 Compensation claim.

4 And it took me approximately a year to get my
5 hearing aides. I was sent to a company doctor, and his
6 audiogram was quite different from my family doctor's, and
7 later Workmen's Comp sent me to another doctor that they
8 recommended, which was in line with my family doctor.

9 And after a year I was fitted up with a pair of
10 hearing aides, and by the way I did pay for my initial
11 examination, and as well as I can remember it, it was about
12 \$175. And it was a little bit higher than a standard
13 examination because the doctor had to fill out Workmen's
14 Compensation papers, and they compensated for that.

15 After I was fitted with my hearing aides, I came
16 back out and it was pretty early in the morning, and I
17 looked at my wife and I said what is wrong with those birds.
18 She said, well, what do you mean. I said, man, they're
19 hollering and they're chirping, an they're carrying on. She
20 said they were doing that when we went in there. You know
21 how birds act up in the spring.

1 And I began to realize how beneficial my hearing
2 aides were to me at that moment. I was hearing things that
3 I hadn't heard in a long time. Later that day our son,
4 about 22 years old, had received his income tax check, and
5 he decided that he wanted to treat his dad and mom out to
6 dinner. He had never done that before.

7 So, we went to a Chinese restaurant, and they
8 brought something out. I don't remember what it was, but it
9 was very crunchy. And when I put that in my mouth and
10 started chewing it, it sounded as if I was chewing up glass.
11 So, right away I became aware of the disadvantages of
12 wearing a hearing aide. It doesn't produce a natural sound.

13 The sounds that I hear are very annoying to me
14 sometimes, like someone banging the dishes, and there are a
15 lot of sounds like that that are not reproduced in a true
16 manner. It's very uncomfortable. You find yourself turning
17 your hearing aides up and down quite a bit.

18 Of course, I can't wear my hearing aides when I'm
19 working because I'm involved as a welder, and I'm exposed to
20 too much noise. And sometimes I will be cutting and I've
21 got a pair of goggles on that kind of limits your vision,

1 and it's like tunnel vision, and you see straight ahead.

2 And I'm glad that I'm not a spooky person, because
3 a lot of times people walk right up on me, and I don't know
4 that they are there until -- I can't hear them coming. I
5 have wore my ear plugs for many, many years, and I don't
6 think the ear plugs prevent you from obtaining a hearing
7 loss.

8 It helps, but I don't think it does the job that
9 they are supposed to do. We need better protection. When I
10 worked in a coal preparation plant, and this was prior to
11 1982, at that time they did have the real thick rubber
12 padding inside the chutes that the gentlemen were explaining
13 to you earlier.

14 And at that time I noticed that the fasteners that
15 held this in the chute were coming loose, and I noticed also
16 that the companies were replacing this rubber padding with
17 steel, which wore a lot better and was less trouble for
18 their maintenance crew to keep up.

19 So, some of the things that these gentlemen are
20 telling you, I have seen them myself in the mining industry.
21 On a job on the strip, we have in our line of duty as a

1 welder, sometimes if a piece of equipment goes down, like a
2 494 Besar series, the main object is to get that piece of
3 equipment back up as quickly as possible.

4 You will have several trucks, six or eight, and
5 sometimes more trucks hauling from that piece of equipment,
6 and you are not being productive if you have got people who
7 are sometimes sitting there waiting for that piece of
8 equipment to come back up.

9 So, the maintenance crew, they make a large effort
10 to get this piece of equipment up as quickly as possible;
11 and what this means a lot of times is that you have three
12 welding trucks sitting there. One welding truck we have has
13 two 600 amp Lincoln Welders on it, and the other ones have
14 one.

15 And all these welding machines are running at the
16 same time. It is very noisy. And when we first go on to a
17 piece of equipment, we will see several cracks in a small
18 area, and so we are working within 10 feet of each other,
19 and there will be two or three people air-arc-ing at the same
20 time.

21 After we air-arc out the crack, which is a very

1 noisy process. You can't carry on a conversation with an
2 air-arc there, and it's a process where you use your
3 electric welder, and you actually melt metal, and then you
4 press the air trigger, and it blows that metal out, and it
5 makes a sound that is very uncomfortable. You can't stand
6 to be near it without any hearing protection.

7 And after that is completed, then we start our
8 welding process, and we have what is called an air slagger
9 that we use to bust that slag out of the weld, and it is
10 very noisy also. So, you have three people and sometimes
11 four people working in a small proximity using air chippers.

12 Sometimes that is at the same time and
13 alternating. It depends on what stage they're in. So, that
14 is some of the problems that we have working on the surface.
15 Also, sometimes equipment is running when we are working on
16 it. It's locked out in a position where you can't move
17 because of any personal harm that motors or whatever are
18 still running, and it is very noisy to be around.

19 We have a 72 cubic yard drag line on our job.
20 Sometimes it is required that we go into the house
21 compartment where the generators and the electric sets are,

1 and perform maintenance, and it is very, very noisy. Of
2 course, they have a sign there that tells you to wear your
3 hearing protection, and we do, but it is still noisy.

4 And if you are required to talk to someone, and I
5 am not exaggerating a bit, you have to get up within two or
6 three inches of their ear and shout at them before they can
7 hear you. And sometimes if they have a hearing problem,
8 they can't really understand what you're saying.

9 So, we depend on sign language, and reading lips,
10 and things like that.

11 (Continued on next page.)

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1 MR. LINVILLE (Cont'd.): The people we work
2 with -- some have had had hearing tests and others haven't.
3 But if you've been exposed to noise and you went through
4 what I've been through, you can recognize the signs of
5 hearing loss. People ask you to repeat several times what
6 you've said. If you don't get someone's attention, they
7 don't know that you're talking to them to start with. So
8 what we've learned to do, to communicate better in the
9 workplace, we address. We say hey Bob and whatever his name
10 is to get his attention first and then we talked to him. We
11 find out that helps a lot. But these are things you have to
12 learn to do or compensate for the hearing loss.

13 The company I work for is a very, very safety
14 conscientious company, have been in the past. They've done
15 a lot to help us out, things that we need, respirators to
16 control the dust or keep us from breathing the air-arc
17 smoke, carbon smoke that comes from it. They've been
18 helpful in providing those for us. They've been helpful in
19 providing ear plugs. You'll find them on the buses, on
20 manned trips, in the machinery, in the shuttles and bag
21 lines.

1 And there's no question if you need some, they'll
2 get them for you. But I'm wondering if what we've been
3 supplied with which is the EAR plug. It's supposed to be
4 one of the best in the industry. Is it really doing us that
5 much good? I mean, it's doing us some good, but I've still
6 got a hearing loss as a result of wearing those over the
7 years. I don't think it's been sufficient.

8 Economics plays a big part in our company that we
9 work for. Recently, we h been in the past the money making
10 company of Ashland Coal. And some of you may have been
11 reading the newspapers. In the last year or so, we've lost
12 \$7 million on our job. Not so much as a result of the
13 working force as it is change in mining conditions. We've
14 moved from east side of Mud River to the west side of Mud
15 River.

16 In the process of moving, production has suffered
17 because the equipment had to travel a long distance without
18 being productive. We're feeling that crunch. The company
19 has tightened up in a lot of ways. They don't seem to be
20 quite as safety conscious as they were. I guess they're
21 trying to survive. And I'm wondering what kind of effect

1 that's going to have on our safety on our job in the future.

2 I'm very thankful also to be a member of the UMWA.

3 And if you look about, I don't think you'll find too many
4 people here who are going to talk to you today that don't
5 have the union backing them up. I'm very thankful for MSHA.
6 We have some good inspectors on our job that are really
7 conscientious about safety and they work with us and we work
8 with them and we've got a good working relationship. And if
9 we didn't have MSHA backing us up, supporting us and
10 enforcing the laws, it would be a pretty tough place for us
11 to work out there, not to say anything at all about our
12 health and safety that would suffer as a result of them not
13 being there.

14 We would like to encourage MSHA to continue to
15 monitor the noise levels and enforce the noise levels at our
16 operations. I'm old enough that I have grandchildren. And
17 I think I might have heard them say I love you that first
18 time only because my wife told me they were talking and we
19 were listening. But there are a lot of things they say that
20 I can't hear. I've got a little girl that's eight years old
21 and sometimes I have to ask her what she said. It's

1 embarrassing.

2 It's something that the miners shouldn't have to
3 go through. They should have good enough hearing
4 protection, rulings and regulations that they won't have to
5 suffer a hearing loss. I'm very thankful that you've
6 allowed me to speak today. I'm glad to be a part of trying
7 to rewrite the laws going will help other people prevent
8 them from having a hearing loss. Thank you, very much. Are
9 there any questions?

10 MS. PILATE: I have two questions.

11 MR. LINVILLE: Yes.

12 MS. PILATE: The audiometric exam that you spoke
13 of, the \$175 figure. How long ago did you take that exam?

14 MR. LINVILLE: I started my first examination in
15 1994. And then later about six months later, I was sent to
16 a company doctor for an audiogram which was quite different
17 from my family doctor. Then I'd say maybe three months
18 later I was sent for examination by the workman's
19 compensation to their doctor. And their doctor's
20 examination agreed with my family doctor.

21 MS. PILATE: For the three tests that you took,

1 what was the average time that you were actually in there
2 taking the exam?

3 MR. LINVILLE: I'd say approximately 2 to 2 1/2
4 hours.

5 MS. PILATE: Thank you.

6 MR. LINVILLE: Thank you

7 MR. THAXTON: We have been going for approximately
8 two hours. So at this time, we would like to take a short
9 break. It seems like we're getting several people are
10 getting a little antsy. And we're sitting on metal chairs
11 up here with no padding. So at this time, we'd like to take
12 a 20 minute break. It is now ten minutes after 11:00. So
13 we will be back at 11:30.

14 (Whereupon, a brief recess was taken.)

15 MR. THAXTON: If there is anybody outside that
16 cares to come back in, we're ready to start again.

17 (Whereupon, a brief recess was taken.)

18 MR. THAXTON: We do have one additional speaker
19 for this morning. Mr. Joe Garcia. I'm sorry, Steve Garcia.
20 I'm sorry, we have a Joe Garcia that works for us. I
21 apologize for that.

1 MR. GARCIA: That's all right. I've been telling
2 inspectors for years that he's my uncle. Okay. My name is
3 Stephen Garcia. I'm with Eastern Associated Coal
4 Corporation, the Vice President of Safety. Appreciate being
5 here today with you all. My initial comments concerning
6 these proposed noise regulations will be general in nature
7 and not complete.

8 MR. THAXTON: Could you spell your name for the
9 record, please?

10 MR. GARCIA: G-A-R-C-I-A.

11 MR. THAXTON: Thank you.

12 MR. GARCIA: Stephen, S-T-E-P-H-E-N. Okay. One
13 thing I would like to comment in three general areas in my
14 opinion the law does not take into consideration: non-work
15 hearing loss, the positive impact of hearing protection, the
16 economic impact of the proposed regs.

17 First off, an example of the non-work hearing loss
18 in Section 62.110 definitions. The definition of reportable
19 hearing loss and standard threshold shift, STS. I believe
20 that it fails to recognize hearing loss due to
21 non-occupational causes such as motorcycles, lawn mowing,

1 hunting, military service, farming, sports type shooting,
2 homework shop activities, ear disease or audiometric
3 abnormalities, some of which has been testified to already
4 here this morning.

5 Second point, positive impact of hearing
6 protection. I believe if we are truly interested in
7 protecting miner's hearing, then the law should require
8 using all controls available, one of which is hearing
9 protection.

10 One of those positive controls should be, and I
11 repeat hearing protection. If the miner is given hearing
12 protection and is properly trained in the use of hearing
13 protectors and properly trained in the maintenance of
14 hearing protection, then hearing protection will show again
15 that it is a very protective method.

16 Our records at a first glance as a company support
17 this fact. Another side benefit of hearing protection, it
18 is economically feasible. In addition to being effective
19 control, sorry to repeat myself there. It is an economical
20 control and I think when we consider hearing protection that
21 we should also apply another rule, the common sense rule.

1 If it works, use it. OSHA uses hearing protection and it
2 allows for the adjustment based on the use of hearing
3 protectors. Why can't we?

4 Third part, the economic impact and there are
5 other economic impacts. I choose to talk about cost as it
6 relates to prep plants. In my opinion, there needs to be an
7 in-depth study to the negative economic impacts that these
8 proposed regulations will deliver to the coal industry and
9 its miners.

10 Let me give you two examples as to why I feel the
11 way I do. We hired an acoustic and noise expert to evaluate
12 two dissimilar prep plants based on near or close to
13 compliance with the proposed regulations. This study
14 considered individual engineering controls, economic impact
15 and noise reduction considerations.

16 Example one, prep plant one, and I quote just a
17 part of the report rather than to bore everybody with all
18 the details here. This is a quote. If it is assumed that
19 employees make a random walk throughout the prep plant on a
20 they make each round, but follow the same general path, it
21 is not likely that significant reductions in the TWA will

1 occur.

2 Even if half the noise resources were controlled
3 or correctly if half the total sound power was reduced, this
4 would yield a 3 dBa reduction which would be extremely
5 expensive. If another half of the sources, i.e.,
6 three-fourths of the total were controlled so that the total
7 sound power was one-fourth of the original, an additional
8 3 dBa reduction would occur for a grand total of six dBa.

9 Unless major reductions of 10 to 15 dBa are
10 achieved throughout the plant for all sources, the cost will
11 be high with very limited benefits as in noise reduction.
12 The cost to achieve a dBa reduction throughout would be
13 prohibitive.

14 To give you some numbers as to what that first 3
15 dBa would cost, it would be a minimum of \$275,000
16 approximately. And it may or may not deliver a 3 dBa
17 reduction.

18 Second example, prep plan two. Quote again, "If
19 noise controls were to be attempted on this plant, it would
20 be less expensive to tear the plant down, remove the
21 equipment and rebuilt it. The only real hope for a facility

1 like this would be more automation and remote sensors."
2 Now, this is a report by an outside independent consultant
3 who is an acoustic type sound expert. He did not give a
4 cost on that side of the issue for tearing that prep plant
5 down, but I would assure you it would be in the millions.
6 Millions. Plural.

7 Second quote of his report in closure, it says "An
8 honest appraisal of both facilities were made and the
9 conclusion is that the controls would be prohibitively
10 expensive in some. In not many cases, technical barriers
11 exist which make controls difficult until the equipment
12 manufacturers explore and find ways to reduce the noise of
13 their equipment. Meaningful reductions are not likely to
14 occur.

15 In closing, I'd like to ask that we recognize the
16 impact of loss due to non-related work issues. And somehow
17 I think there's a flaw that we have to look at that and
18 study that. I think we need to add the common sense factor
19 of hearing protection and technology that we currently have
20 in here today. And some people in this room today testified
21 that it is working in some place and locations.

1 From an economic perspective, I think we need to look
2 at a complete economic analysis and reevaluate the current
3 economic analysis that was done for these regulations.

4 Thank you. Any questions?

5 MR. VALOSKI: I have one. You said or actually
6 it's a request for additional information. You said your
7 records show that HPDs are working.

8 MR. GARCIA: I said initial gloss, our initial
9 look at the records for hearing loss claims show a flat line
10 and I'm assuming that the hearing protection is working
11 because of that fact.

12 MR. VALOSKI: Okay.

13 MS. PILATE: I would ask that you submit the
14 report that you have for our record.

15 MR. GARCIA: I would be willing to do that if you
16 send me a business card and I'll send you a letter of
17 confidentiality and be more than happy to do that once
18 that's received. Any other questions?

19 MR. THAXTON: Okay. Thank you, sir.

20 MR. GARCIA: Thank you.

21 MR. THAXTON: At this time, that completes all the

1 people that have signed up to make a presentation to the
2 panel. We'd like to ask now if there is anyone in the
3 audience that has not previously made their wishes known to
4 address panel. If there's anyone present that cares to
5 make an address to the panel. Yes, sir?

6 VOICE 5: I'd like to make a presentation to the
7 panel.

8 MR. THAXTON: Do you wish to do that now? Or we
9 can do it after lunch.

10 VOICE 5: Whatever's convenient for you.

11 MR. THAXTON: You will be available after. Given
12 the hour and the time that the cafeteria is available here
13 at this facility for lunch, we'll break now for lunch and
14 return at 1:15? And at that time in the meantime if you
15 would come forward and sign our sheet, we will make
16 arrangements. Then you'll be presenting after lunch. At
17 this time, we'll adjourn then for lunch. Thank you.

18 (Whereupon a lunch break was taken from 11:54 a.m.
19 to 1:18 p.m.)

[1:18 p.m.]

We have two speakers that have signed up from the morning session. We'll start out with Edward Moss. And again, I'd remind the speakers please state your name, the organization that you represent and then spell your name please.

MR. MOSS: Mr. Chairman, my name is Edward Moss, E-D-W-A-R-D, M-O-S-S. I represent Bituminous Safety Services which is a small health and safety consultant company that provides services to the small and medium size mining operations in Northern West Virginia, Southwest Pennsylvania and Western Maryland coal fields. And I

1 provide health and safety related work activities to the
2 underground and surface industry as well as the metal and
3 non-metal industry.

4 Now, I did not intend to speak today. And so my
5 remarks I have put together in an extemporaneous fashion and
6 there may be some rambling thoughts here. But I think there
7 are some things that need to be said.

8 First of all, I've been following this rule since
9 its first initial publication and I'd like to pass some
10 information onto the panel in regard to what I've discovered
11 in regard to costs relating to surface operations because
12 that's my primary area of interest at this time.

13 Using my data that I've collected in performing
14 noise surveys and also MSHA data that I was able to collect
15 on the same surface mine operations, performed by MSHA
16 inspectors where I either used Freedom of Information Act
17 information or the cooperation of field office
18 representatives. Under the proposed rule of the mining
19 operations that I currently service, 50 percent of the
20 workforce will be required to be enrolled in a hearing
21 conservation plan. And, of course, that hearing

1 conservation hearing plan will be triggered by a dose level
2 of 50 percent. At least ten percent of the equipment
3 operators will exceed the permissible exposure level or the
4 100 percent dose level.

5 Now, in terms of cost, I view the \$9 million
6 figure that MSHA's quoted in terms of the economic impact as
7 grossly understated. For example, hearing conservation
8 hearing exams according to what I have been able to
9 determine in contacting audiology clinics and things like
10 that will run anywhere between \$50 and \$150.

11 Add to that the expense of compensating the miner
12 during the examination process, the cost of the record
13 keeping process, reporting and that at least is going to
14 double the initial cost of the hearing conservation
15 examination, the hearing test.

16 Now, in regard to mobile equipment that exceeds
17 the PEL level, I contacted a CAT dealer and tried to get a
18 determination as to what the cost would be to replace the
19 sound suppression material in certain makes and models of
20 mobil equipment, such as loaders and dosers and pieces of
21 mobile equipment that are commonly used in the surface

1 industry and surface of the underground industry.

2 I could not get an exact figure, but in regard to
3 the conversations I had, it was apparent to me that if we
4 went through a complete replacement of the sound suppression
5 cab, that is the sound suppression material in the cab of
6 mobile equipment, muffler systems, this is going to range
7 anywhere between \$2,500 and \$5,000 per machine.

8 Using the present rule and the language of the
9 rule where it says engineering control using current
10 applicable technology, this will place an overbearing
11 expense on some of the small mine operators. In fact, a
12 couple of the companies I work for could literally be placed
13 out of service. They could not economically absorb the cost
14 of this and still be competitive.

15 Further, what bothers me in the current rule is it
16 says current applicable technology. It doesn't seem as
17 though it has an apparent closure. It doesn't seem like the
18 loop can close. Where does current applicable technology
19 end?

20 If you give me enough money, I could engineer
21 every work position to under 50 percent dose level. The

1 federal government doesn't have that much money. And
2 certainly the coal industry doesn't have that much money.
3 Now, lastly and what is even more bothersome about the rule
4 is the language that says when reasonable engineering
5 controls have been attempted and they're still above the PEL
6 level, then hearing protection can be used.

7 Now, when I make an attempt to explain this to
8 miners in my classes, I sort of get a two-phased reaction.
9 First of all, they get a glazed look over their face and
10 then they start to scratch their heads and then they start
11 to laugh. And the reason why they start to laugh is that
12 they know that hearing protection under the current rule is
13 acceptable under the front end and magically it becomes
14 acceptable on the back end under the new proposed rule.

15 Now, how can it be acceptable now on the front end
16 of the rule and we incorporate engineering controls and
17 hundreds of thousands and millions of dollars and that
18 doesn't work? Now we're going to incorporate it on the end
19 portion of the enforcement process.

20 I would entertain any questions from the panel.

21 MR. THAXTON: You said 50 percent of the workforce

1 would exceed the ADCP or the action level and 10 percent of
2 equipment would exceed the PEL. Could you amplify on those?
3 Did you measure X number of pieces of equipment?

4 MR. MOSS: I don't have my data in front of me,
5 but I would venture to say that just about every Cat D9-G
6 dozer is going to be above the 90 dBa level. Some of your
7 larger Cat 992C or 992A loaders that are rock loaders,
8 they're all going to be above 90. Some of the drills are
9 going to be above 90. Some of the loaders, some of the
10 older loaders are going to be above 90. Preparation plants,
11 there's going to be, there are areas in preparation plants
12 that are going to be consistently above 90.

13 MR. THAXTON: Are you willing to provide your
14 survey data to the panel?

15 MR. MOSS: I'll collect as much of that data and
16 present it to you at your convenience.

17 MR. THAXTON: Do you have the address? It's the
18 address that's in the Federal Register notice. If you can
19 forward that information to Pat Silvy with the Office of
20 Standards, it would be appreciated.

21 MR. MOSS: I'll be glad to.

1 MR. THAXTON: Any other questions?

2 MS. PILATE: I have one. Are you aware that the
3 cost estimates do include record keeping costs as well as
4 wage costs?

5 MR. MOSS: I am and I think they're understated.

6 MR. THAXTON: You think the wages, the hourly cost
7 or what exactly?

8 MR. MOSS: Well, I'm saying that the figures that
9 are calculated in terms of the estimated costs are not
10 accurate in terms of what they truly are going to be once
11 the rule is fully enforced.

12 MS. PILATE: It might be helpful if you write down
13 specifically what you have in mind and submit that.

14 MR. MOSS: Okay.

15 MR. THAXTON: Okay. Thank you, very much. The
16 next speaker is Linda Lester.

17 MS. LESTER: Good afternoon. I appreciate you all
18 letting me speak before the board here. My name is Linda
19 Lester, L-I-N-D-A, L-E-S-T-E-R. And I represent the United
20 Mine Workers.

21 I went in a coal mine in 1979 at the age of 18

1 years old. I worked in a shaft mine. It's 1,550 feet deep
2 in Southwest Virginia. I've been a roof bolster for nine
3 years. I've been on a continuous miner, belt conveyors,
4 long wall and numerous other jobs during my mining
5 experience.

6 I wear hearing protection and have had numerous
7 ear infections from the wearing of hearing protection. My
8 ears feel as if they're stopped up most of the time. I
9 don't hunt. I do mow my lawn and watch tv. I'm associated
10 with all the other outside world, but I still feel that a
11 lot of the noise and stuff I've been subjected to in the
12 mines and from mining equipment has caused the pressure and
13 stuff that I feel in my ears most of the time.

14 My son frequently asks why the tv's on or the
15 radio's on so loud. The only way I can productively watch a
16 tv show is to have the volume turned up to be able to hear
17 any conversation going on, on the tv.

18 In March of 1996, I was required to have a return
19 to work physical which included a hearing test. The hearing
20 test was given to me by a nurse which was approximately ten
21 minutes that it took her to test my hearing. I asked her

1 the results of it and she said that it was fine. And the
2 one thing that I would urge you to do, you know, I went
3 through the proposal that MSHA brought down and all laws,
4 rules and regulations are only as good as the enforcement
5 agency make them.

6 You know, it's just like out here on the road.
7 We've got to speed limit of 65. But if we don't have
8 troopers and people enforcing that, then you've got run away
9 people going down the interstate. I would strongly urge
10 that you would look at the enforcement of this. If given to
11 the coal companies, it will be just like the dust procedure.
12 It will be tampered with and the miners won't benefit a
13 great deal from whatever comes out of this.

14 And I also know that economics will play a strong
15 argument in these hearings and in these regulations, but the
16 one thing I would ask is how do you put a price on someone's
17 hearing? You know, where down the road do you compensate.
18 Just like myself, I'm 35 years old. I don't have
19 grandchildren yet. And I have a hard time hearing my son.
20 Another 10, 15 years, what's going to compensate me for the
21 fact that I have to wear hearing aids or something else due

1 to being in an environment that is extremely too noisy for a
2 person to have to work in. And I thank you very much for
3 your time.

4 MR. THAXTON: Thank you, very much. That
5 concludes the people that we have on our list as signing up
6 to address the panel at this time. As I've said before, we
7 do have a list of approximately 17 people that have asked to
8 address the panel around 4:00 o'clock today. At this time,
9 I'd ask if there are any people in the audience that would
10 like to address the panel at this time. If you have not
11 signed up, come forward at this time and you can sign the
12 sheet and you can make your presentation. And also, if
13 there is anyone present that is on the agenda for the 4:00
14 o'clock timeframe, if they'd care to make their presentation
15 at this time, they are welcome to as well. No one.

16 The time right now is 1:35. The panel will take a
17 break then until 2:30. We will reconvene at 2:30 to
18 determine if there are any other interested parties present
19 that would like to address the panel. If at that time there
20 are no people present that would like to address the panel,
21 we will adjourn again, recess again rather, until 3:30. At

1 3:30, we will return and stay here until the group that is
2 asked to make their presentations starting at approximately
3 4:00 o'clock have completed all of their presentations.

4 Any questions related to that? Okay. At this
5 time, we will recess and report back, the panel will be back
6 in session then at 2:30.

7 (Whereupon, a brief recess was taken.)

8 MR. THAXTON: Okay. The time is now is 2:35. We
9 are going to go back on the record and we will ask if there
10 are any people, persons present that would like to sign up
11 now to make a presentation to the panel. With no persons
12 present that would like to make presentations at this time,
13 the hearing panel will recess then until 3:30 at which time
14 we will come back and reopen the hearings and we'll stay in
15 session then until the group that is coming in at 4:00
16 o'clock has had ample time to make their presentations.
17 Thank you.

18 (Whereupon, a brief recess was taken.)

19 MR. THAXTON: We'll go back on the record. It is
20 3:35. At this time, I don't see any new faces in the
21 audience. As a matter of fact, I see very few faces in the

1 audience. The panel will stay here until such time as other
2 people show up. We will actually show the record again,
3 hold it in recess until other people show up.

4 (Whereupon, a brief recess was taken.)

5 MR. THAXTON: Okay. We'll go back on the record.
6 We understand now that of the list of 17 persons that were
7 going to testify this afternoon, we now have five persons
8 that will actually be doing presentations today. So those
9 people are present at this time. So at this time we'll
10 start with the first person to present would be Bill Cox.
11 Mr. Cox, we would ask that as you come forward that you
12 state your name, spell your name and then state your
13 affiliation at the beginning before you make your
14 presentation, please.

15 MR. COX: I'm Bill Cox. I work at Windsor Coal.
16 I'm an inside mechanic. I've been there 20 years. I've
17 come to the hearing to state my --

18 MR. THAXTON: Please spell your name.

19 MR. COX: Bill Cox, B-I-L-L, C-O-X.

20 MR. THAXTON: Okay. Thank you.

21 MR. COX: I wanted to state my opinion on the

1 hearing protection and what is being decided. What I see in
2 the mines, we've loaded more coal in the past year. It has
3 become noisier. We need to make some changes. I feel that
4 if we spend time and engineering, we can improve the systems
5 that are out there to protect us. The hearing protection
6 that's available to us doesn't work all the time.

7 The operators, if they were to maintain records
8 and be in charge of doing the testing, it would become a
9 problem, basically because they're in business to mine coal.
10 They need assistance with that through UMW, through the MSHA
11 office so the system can work and we can all be involved.
12 That's all I have to say.

13 MR. THAXTON: Thank you. The next person on the
14 list is Tony -- I won't pronounce your last name.
15 P-I-S-S-O-S. And the reason that we asked you to come
16 forward and ask you to state your name and spell it is for
17 recorder so that we make sure that we have an accurate
18 record.

19 MR. PISSOS: My name is Tony Mike Pissos, Safety
20 Committee. I worked in the mine for 32 years, 10 years at
21 Console, 22 years at Windsor. I've worked on boulders. The

1 noise level is very, very loud. The fan noise is very loud
2 too. I've been around belt heads and the noise is bad there
3 too. I've been around stage loaders too.

4 I'm having trouble hearing too. I wear ear plugs,
5 but ear plugs ain't doing the job that they're supposed to
6 do. I think the company should let the Federal Mine Safety
7 and Health Act of 1970 stay with the MSHA. Let the company
8 spend the money on getting better engineering control on the
9 fan, boulders, stage loaders and at the preparation plants,
10 crusher housers, dozers, et cetera.

11 MR. THAXTON: Okay. Thank you. The next speaker
12 is Roger Sparks.

13 MR. SPARKS: Roger Sparks, R-O-G-E-R, S-P-A-R-K-S.
14 I work at the Windsor Coal Company and have been an
15 underground miner for 23 years. Everyone should remember
16 the problems that occurred in some of the coal companies
17 when they were able to police their own dust problems. That
18 is why I'm very much opposed to letting the coal companies
19 have total control over their noise surveys. Everyone knows
20 books and records can and probably will be falsified in some
21 cases. What we need to do is spend more money on technology

1 to solve the problem and no more money on ear plugs.

2 MR. THAXTON: Okay. Thank you. The next speaker
3 is Tom Kacsmar.

4 MR. KACSMAR: My name is Tom Kacsmar,
5 K-A-C-S-M-A-R. And I'm employed at Windsor Coal Company at
6 West Liberty, West Virginia as a roof bolster. I have
7 worked 34 1/2 years in underground mines as a foreman and
8 UMWA hourly employee. I am testifying today because we
9 still have problems with noise in regard to roof bolting
10 machines, auxiliary fans, continuous miners, stage loader
11 areas, loading machines and also other areas.

12 I feel very strongly that giving the coal company
13 control of noise sampling would be very bad for the health
14 of working miners. I also feel that the coal company's
15 answer to noise problems is more ear protection in these
16 types of solutions instead of less noisy equipment and
17 better technology.

18 I also feel that the coal companies should do what
19 they do best and that is mine coal and let MSHA do what they
20 do best, enforce the laws and take care of the noise
21 sampling. After all, some of the coal companies couldn't be

1 trusted with dust sampling in the past. So how can we be
2 expected to trust them if they have control of noise
3 sampling? Thank you.

4 MR. THAXTON: Thank you. Okay. Our last speaker
5 is Dennis O'Dell.

6 MR. O'DELL: My name is Dennis O'Dell,
7 D-E-N-N-I-S, O-'-D-E-L-L. I am the International Health and
8 Safety Representative of the United Mine Workers. The area
9 that I cover is Northern West Virginia as well as Ohio.

10 In looking at the proposed rule for the noise
11 exposure, there are some of the issues that I found in the
12 proposed noise standard which are cause for concern. One of
13 those concerns is the performance oriented rule.

14 The one issue that should be of greatest concern
15 is the fact that this rule is performance oriented or
16 self-enforced by the operators. MSHA indicates in the
17 preamble on page 66357, Question 17 that the mine operators
18 are required to establish a system of monitoring which
19 effectively evaluates each miner's noise exposure.

20 It points out that specific requirements for
21 biannual noise surveys, calibration reports, survey reports

1 and survey certification now applicable to the coal sector
2 would be revoked, significantly reducing costs and paperwork
3 burdens. In other words, it would be up to the operator to
4 monitor their own noise levels according to a mine specific
5 plan unlike the current rule which requires noise survey to
6 be conducted at intervals of at least every six months and
7 reported to MSHA and the Department of Health and Human
8 Services as required under 30 CFR 70.508 and 71.803.

9 Under the proposed rule, the mine operator would
10 voluntarily comply with the administrative and engineering
11 control requirements whenever they find themselves out of
12 compliance. Although the current rule is similar in regard
13 that the operator must self-monitor their noise levels,
14 experience with the operator's widespread cheating in the
15 dust monitoring program should be enough said to prove that
16 self-monitoring programs do not work and the new rule should
17 eliminate this kind of practice.

18 MSHA's role will be limited to taking their own
19 measurements when they deem appropriate to check on the
20 effectiveness of an operator's monitoring program. The
21 miner's representative is not provided a role to participate

1 in the program and will be limited to walk around rights
2 with MSHA when they check on the operator's program.

3 Under the instrument calibration and record
4 keeping, this proposed rule eliminates all requirements for
5 instrument calibration and record keeping of such tests.
6 Section 70.506 of the current standards set forth the
7 requirements for noise exposure measurements procedures,
8 instrument settings and calibration.

9 Paragraph d(4) and e(2) requires a record to be
10 kept of the date and the name of the individual and
11 organization performing annual calibrations of personal
12 noise, decimeters and sound level meters. The proposed rule
13 eliminates these requirements. The preamble points out that
14 although calibration requirements are not specifically
15 mandated in a proposal, good industrial hygiene practice
16 dictates that any instrumentation used for determining a
17 worker's occupational exposure to a contaminant, in this
18 case noise, be calibrated. And that can be found on page
19 66417 in the first column.

20 Like the rationale used in the ventilation
21 regulations regarding calibration of instruments, MSHA

1 believes that the operator has an obligation to maintain
2 these instruments in proper working order and will do so
3 voluntarily. Likewise, the proposed rule does not include
4 specific procedural requirements for conducting audiometric
5 tests calibrating audiometers and qualifying audiometric
6 test rooms. However, I'm not as concerned about this and
7 the reason being because I'm to assume that this is to be
8 done and performed by certified professionals.

9 The new proposal eliminates reporting
10 requirements. Under the current rule, the noise survey
11 conducted by the operator every six months and supplemental
12 surveys conducted when they are out of compliance must be
13 reported to MSHA and the Department of Health and Human
14 Services is found in 30 CFR 70.508 and 71.803 on a specific
15 form. MSHA uses these reports to issue a notice of
16 violation.

17 Under the proposed rule, 62.125(f)(2), whenever a
18 miner's noise exposure is determined to exceed the actio
19 level, the permissible exposure level, the dual hearing
20 protection level or the ceiling level and a miner has not
21 received notification of exposure at such level within the

1 prior 12 months, the operator must then notify the operator
2 in writing of the exposure prior of the exposure and
3 corrective action being taken within 15 calendar days.

4 There is no requirement for the operator to
5 provide this information to MSHA, but instead must maintain
6 a copy of such notification at the mine site for the
7 duration of the effective miner's exposure above the action
8 level for at least a period of six months thereafter. It
9 will then be up to the MSHA inspector to review these
10 records during his regular or spot inspection.

11 And what I fear is that these records will be lost
12 in the shuffle when the inspectors make their inspections.
13 There are so many other records, plans, et cetera, that an
14 inspector must review prior to inspection, I believe the
15 noise exposure records could easily fall to the bottom of
16 this list as much of our health and safety issues do.

17 In addition, these records must only be maintained
18 while the miner's exposure level is out of compliance and
19 for six months thereafter. Then they can just disappear.
20 If the inspector does not make his inspection during the
21 period the record is maintained, then he'll have no way of

1 checking the history of a particular miner's noise exposure.

2 NIOSH has made some recommendations in the past
3 and you even point out in the preamble that NIOSH is
4 considering whether the evidence on noise since 1972
5 warrants a change in its recommendations. In some cases,
6 NIOSH is considering reiterating its prior recommendations
7 and in other cases it's considering changing its
8 recommendations.

9 MSHA is determined that it would not be
10 appropriate to delay publication of this proposed rule to
11 await the possible issuance of a new NIOSH criteria
12 document. It also goes on to say that should a new criteria
13 document be issued before MSHA promulgates the final rule,
14 it will, of course, consider the NIOSH recommendations.

15 I've been informed that NIOSH recommendations have
16 been completed. And one of the recommendations made by
17 NIOSH which was ignored by MSHA's concerns, the correction
18 factor to audiometric test results for the presbycusis which
19 is a progressive loss of hearing acuity associated with the
20 aging process. I hope I pronounced that right and didn't
21 mess it up too bad. Presbycusis, is that right?

1 MR. POWASNIK: Presbycusis.

2 MR. O'DELL: Presbycusis. Thank you. MSHA has
3 proposed to permit operators to adjust audiometric test
4 results for presbycusis before determining whether an STS or
5 a portable hearing loss has occurred. And that's referred
6 to on Question 27. NIOSH's reasoning for this
7 recommendation is discussed in the preamble on page 66370.
8 It points out NIOSH recommends that age correction not be
9 applied to an individual's audiogram for the calculation of
10 a significant threshold shift. Although many people
11 experience some decrease in hearing sensitivity with age,
12 age correction cannot be accurately applied to audiograms in
13 determining an individual's significant threshold shift
14 because the data on age related hearing losses describe only
15 the statistical distributions in populations.

16 Thus, the median hearing loss attributable to
17 presbycusis for a given age group will not be generalizable
18 to the presbycusis experienced by an individual in that age
19 group. MSHA's argument for age correction has been that the
20 employer should not be penalized for hearing losses due to
21 aging. Because the agency points out that there is a

1 significant risk of material impairment from noise exposure
2 at or above TWA-8 of 85 dBa's. But it would be too costly
3 to industry to achieve this level and consequently set the
4 standards at 90 dBa. It's unfair to provide any other means
5 of artificially reducing the noise survey results.

6 One of the other concerns I had was the training
7 requirements. Under this proposal, whenever a miner's noise
8 exposure exceeds the action level, as specified in
9 62.120(b), the operator must provide training. In the
10 preamble, Question 22 asks whether this training can be
11 covered in the regular Part 48 annual retraining.

12 The Agency makes a strong argument as to why
13 sufficient training cannot be provided in normal Part 48
14 training, but then agrees that it can be done. The argument
15 they make against this policy states MSHA has determined
16 that the requirements of Part 38 do not provide adequate
17 noise training for those miners of whom exposure is clearly
18 a problem.

19 Most current Part 48 training is neither comprehensive
20 enough to provide such monitors with the level of education
21 needed for the proper use of hearing protection devices, nor

1 in the case of noisy mines, detailed enough to reduce sound
2 levels. Contrary to this argument, the Agency goes on to
3 say, nevertheless, MSHA believes compliance with this
4 proposal can in many cases be fulfilled at the same time as
5 scheduled Part 48 training. The argument does not make good
6 sense.

7 The mining community has complained for decades
8 that there is insufficient time to cover the mandated topics
9 in the Part 48 training now. It is totally unreasonable to
10 believe the sufficient time could be provided to properly
11 cover the material that should be included in the special
12 noise training which will become so important.

13 The permissible exposure level. The proposed rule
14 sets a 90 dBa permissible exposure level. The level which
15 mine operators are required to use all engineering and
16 administrative controls feasible to reduce the noise to the
17 PEO. However, MSHA admits that it has concluded that there
18 is a significant risk of material impairment from noise
19 exposures at or above a TWA-8 of 85 dBa. The Agency
20 rationalizes that they could not require PEO of 85 dBa
21 because it would require about two-thirds of the mining

1 industry to use engineering and administrative controls to
2 reduce current exposures and would be too costly.

3 We heard a gentleman this morning speaking about
4 the cost that would occur at the Peabody facility. It would
5 be cheaper to tear a plant down and rebuild it than it would
6 to make those changes possible. I think he gave you another
7 figure of one plant that it would cost \$275,000 to reduce
8 the dBa level by three I think if possible. I personally
9 feel, as well as the miners that have to work in those
10 conditions, that our hearing is worth \$275,000.

11 Although, the PEL is set at a higher level, other
12 provisions, such as the correction factor are in the
13 regulations to further reduce the compliance level for the
14 operator. If there is a significant risk factor at 85 dBa,
15 then I as well as the miners feel that this should be
16 reflected.

17 Another area which I read that I had a problem
18 with was in the definition of small mines. The proposed
19 rule indicates that exemptions to the rule were being
20 considered for small operations. The preamble states that
21 the proposal would require a mine operator to use only such

1 engineering controls as are technologically feasible and to
2 use only such engineering and administrative controls as are
3 economically feasible for that mine operator.

4 In determining economic feasibility, MSHA points
5 to the Commission history. The Commission has ruled that
6 MSHA must assess the cost of the control are
7 disproportionate to the expected benefits and whether the
8 costs are so great that it is irrational to require its use
9 to achieve those results.

10 In addition, MSHA points out that they are
11 considering whether to use fewer than 20 miners as a
12 definition of small mines for purposes of the Regulatory
13 Flexibility Act. Discussion in the preamble on page 66368
14 indicates for the rulemaking regulatory flexibility
15 analysis, the Agency is using fewer than 20 employees.

16 In addition to the SBA's definition of fewer than
17 500 as required by the RFA, MSHA presently is consulting,
18 from my understanding, with the SBA's Office of the Chief
19 Counsel for advocacy in order to determine an appropriate
20 definition to propose to the public for comment in the
21 future. It goes on to state, the Agency has not established

1 a definition of small entity for the purposes of the final
2 rule.

3 If the agency is considering the SBA's definition
4 of fewer than 500, most of the coal mines in operation would
5 fall under this category. We need to address this issues to
6 make sure that this does not happen. A large coal mine in
7 this day and age employs 300 miners. That's a large coal
8 mine.

9 In an other location, MSHA indicated that it is
10 proposing that the new standard not take effect for a period
11 of one year in order to accommodate small operations. And
12 you'll find that on page 66362.

13 This morning and this afternoon you heard
14 testimony and experience. You heard testimony from miners
15 that were emotional. The reason being is because we now
16 know it's time for a change so that all of us don't leave
17 the industry with deaf ears.

18 We know that this can be done. As well as
19 representing coal mines, I also represent non-coal
20 operations. And these operations are covered under OSHA
21 standards. And it amazes me how one agency can set

1 regulations and standards that the industry has shown they
2 can comply and this has been going on for several years.

3 The coal operators will argue with this Agency
4 that they cannot comply. And I'm telling you here and now
5 that the equipment in the plants that I inspect have the
6 same potential to be as noisy as our underground equipment
7 has been.

8 You have two regulatory agencies. You have OSHA.
9 You have MSHA. We have the same industrial exposure hazard
10 which is noise, which is deafening. So I think we should
11 have the same regulatory protection and enforcement. It's
12 already been proven that it's possible to do. Some
13 companies I will agree have good hearing conservation
14 programs, but in many instances it's not enforced. And
15 testimony today has showed you the best conservation plans
16 that we have, have failed because we still have hearing
17 impaired monitors.

18 That sits real uneasy in a lot of people's guts.
19 It's easy to hear from us, but as you saw this morning we
20 had a guy that had hearing aids. And when he took them out
21 outside, when I listened to him talk [walks away from mike]

1 I'm sure all you could do was read my lips. It wasn't easy
2 to make out what I was saying. And we have brothers that
3 wake up everyday with that experience. And, yes, it's
4 emotional. And, yes, it doesn't sit well. And it's an
5 issue we found hard to stomach. And we have an opportunity
6 today to do something about that.

7 We had an issue some time ago about dust and
8 proper fitting and some of you may have been on that panel
9 with proper fitting respirators and whatnot to keep dust
10 out. I wish you could tell me what a proper fitted hearing
11 protection is, who does that. When should they be changed?
12 Are ear muffs the answer? Ear muffs are installed on
13 miners's hats. And then all they do is they pull them down.
14 Miners are required to wear respirators and are required to
15 wear glasses. And glasses do not allow ear muffs to fit
16 tightly against you. So, therefore, you have some leakage
17 and some noise escapes and gets in and still deafens those
18 ears.

19 We heard of the problems this morning discussed on ear
20 plugs. They get dirty. They have different levels of
21 protection. Do they know what level of protection they

1 need? Are they properly fitted? Do they irritate? As we
2 heard some of the miners, I think Brett testified this
3 morning they irritate him. He can't stand the off balance.
4 There's a part in there that suggests possibly dual hearing
5 protection. So now you want us to put ear plugs in and ear
6 muffs over top of that. And as I spoke to you in the back
7 of the room, all you could do was see my lips move.

8 Now, you magnify that with noise, magnify that
9 with adverse roof conditions or work conditions and with the
10 machinery running and the air blowing across you, you can't
11 hear it. You can't communicate. That's a potential.
12 That's a potential for a disaster. That's a potential for a
13 fatality. Communications are the only thing that we can use
14 underground. That's the only means we have of making sure
15 that a miner's not ran over, or that a piece of rock doesn't
16 fall on his head.

17 On the surface facilities, we have the same
18 problem with large pieces of equipment. We have gentlemen
19 in cabs of large dozers and trucks and there's a lot of
20 noise that they have to overcome and they have a little two
21 way radio that they use for communications. Or a guy

1 standing on the ground behind that big truck who has to
2 listen for that backup alarm so that he doesn't get run over
3 because the operator can't see him because he's out of
4 sight.

5 Dual hearing protection is not the answer, not in
6 a day and age when you have technology which you can use,
7 engineering controls to block out some of the excessive
8 noise. I requested from MSHA the operator's reports on
9 their noise surveys. And they ranged from a pretty good
10 report in-depth to a report that simply stated the name of
11 the company, with a handwritten note saying we're in
12 compliance period. That's it. We're in compliance. No
13 record of what was done, what tests were taken, just a
14 little piece of paper with the miner's name, if it was done
15 by the operator or somebody that they contracted out to do
16 that with a note saying Mom's Coal Mine is in compliance,
17 John Doe, period.

18 Now, think about that for a minute. Think about
19 if that same company, that same operator, were allowed to
20 police this type of activity themselves. You're going to
21 get thousands of notes, if you get that. And those notes

1 will be left at the coal mining site saying we're in
2 compliance period. And maybe they'll be checked and maybe
3 they won't. Maybe this month we're down, our production's
4 down by 30,000 tons. So we may get the health survey in.
5 We may not get it. But that's the possibility and that's
6 the things that may happen.

7 That's why you're here today. That's why you saw
8 so many miners here this morning. That's why you see the
9 miners here this afternoon. Not only to protect other union
10 miners, but also the unfortunate miners from our non-union
11 operations that have no voice to show you their concerns.

12 It is emotional to many of us because it's
13 personal. We have fathers. We have grandfathers. We have
14 uncles, brothers, sisters. We have ourselves that can no
15 longer hear the robins singing in the morning, the simplest
16 things that people with good hearing take for granted until
17 that hearing is lost.

18 I would hope that you take the UMWA's comments and
19 adopt those changes we suggested to make this a good
20 regulation for all mankind concerned. Look at our concerns
21 in this manner. I don't know if any of you have ever bought

1 a used car before or not, but it's quite an experience. You
2 go to a used car dealer and he tells you this is the perfect
3 automobile for you. Nothing wrong with it. Excellent
4 condition, low mileage, driven only on Sundays. And you're
5 to believe what that guy is telling you is true.

6 But in some cases you may pick the phone up and
7 call the previous owner. And the previous owner has a
8 completely different story. The seals leak. The brake
9 lines are bad. There's a number of things. That's the
10 reason I got rid of that piece of junk. It needs fixed.
11 It's broken. It's bad. I got rid of it.

12 We're that previous owner. We work with the
13 equipment. We're there on a day-to-day basis. We're there
14 10 to 12 hours a day. We know what problems need fixed and
15 we know the rest of the story and I hope you'll take that
16 into consideration.

17 I have a couple of questions before I tie up, and
18 I appreciate your courtesy in sitting here today. I would
19 just question as to why it has taken so long for us to get
20 to this point. 1983, OSHA hearing conservation amendment.
21 1983 this was done. OSHA's a Department of Labor. MSHA's a

1 Department of Labor. MSHA's not the Department of Mine
2 Operators.

3 There's a report that says that audiologists
4 predict that by the end of the year 2,000 as many people
5 could be wearing hearing aids as now wear contact lenses.
6 That's a scary thought. It is believed that weaker hearing
7 is a part of aging, but there are many studies, and I would
8 like to submit some of these articles to you when I finish.

9 The studies show that those living in low noise
10 environments tend to have very little hearing loss in old
11 age. What does that tell us? There's a theory that the
12 standard should protect the lifetime hearing of 90 percent
13 of workers. But what this theory is assuming is that a worker
14 will have 16 hours of quiet to recover.

15 And that's an unlikely assumption. And the reason
16 for that being is because most miners work today an average
17 of ten hours a day, six days a week. And when they leave
18 that, I don't know about you guys, but a lot of us have kids
19 at home and you have sibling rivalry. You have loud
20 arguments. You have loud music, fancy sophisticated CDs.
21 It's not quiet time. Realistically, the real world is it's

1 not quiet time. We don't have that time to recover in which
2 the study assumes that we do have.

3 Other effects of noise. People who must endure
4 loud environments may risk more than their ears. There are
5 studies that show they can suffer elevated levels of
6 cholesterol and more stomach and intestinal ulcers, higher
7 blood pressure, and more heartbeat abnormalities than people
8 who live and work in quieter environments.

9 I have a couple of reports here which I'd like to
10 submit. It's kind of funny. This is a report that most of
11 you may be aware of. It's a hearing conservation for the
12 mineral industry -- the mining industry. The United States
13 Department of the Interior. And it talks about much of the
14 things that we talked about today. It talks about reducing
15 those levels that damage not only the environment, but the
16 people that live in the environment. Some good stuff here.

17 There's an article about noise, Purdue University,
18 West Lafayette, Indiana. The gentleman's name was John
19 Barry and he submitted an articles about problems and
20 enforcement, problems of noise exposure, the enforcement of
21 occupational noise standard. And one of the things that he

1 summarized with in his conclusion is to rely upon ear
2 protection in the absence of a continuing effective hearing
3 conservation program is immoral as well as illegal.

4 Here's another hearing conservation amendment that
5 I would like to submit. There's an interesting article here
6 also out of Reader's Digest. Reader's Digest. Can you
7 imagine that?

8 Everyday over five million Americans are exposed
9 on the job to at least 90 dB's. The safety standard is an
10 ideal because noise effects each individual differently.
11 And I'd like to submit this, but I'd like you also to
12 promise that you'll look at this information and read it.
13 Just don't file it somewhere please.

14 Also, I have some plans and programs from some of
15 the different areas that I represent as far as the mines go.
16 You might find it interesting and it addresses the mandatory
17 hearing protection policy at some of the mines such as
18 Consol, Southern Ohio, AAP, those places. But when you read
19 this, it looks real good on paper and the philosophy of it
20 is excellent, but the enforcement's not there. It's
21 something that's not followed up. It's something that is

1 lax attitude at best. It just doesn't work because it's not
2 enforced to work.

3 And with that, gentlemen, ladies, I thank you for
4 your time and your patience. I appreciate everything.

5 MR. THAXTON: Okay. And you are going to submit
6 those reports to us?

7 MR. O'DELL: Yes.

8 MR. THAXTON: Okay. If you can give those to
9 Ms. Fontaine, they will be included as part of the record.
10 Any questions? Thank you, Mr. O'Dell.

11 At this time, that concludes the number of people
12 that were actually on our listing. I'll again make the
13 offer if there is anyone present in the audience that has
14 not had the opportunity to speak and wishes to do so, please
15 come forward at this time to Ms. Fontaine on my far right,
16 identify yourself and sign the speaker sheet and you'll be
17 permitted to address the panel at that time.

18 Okay. There's no further speakers at this moment.
19 The panel will stay in session and stay here until 5:00
20 o'clock in case anybody else happens to walk in to address
21 the panel. We will be here. We do not plan to recess the

1 hearings until 5:00 o'clock this evening.

2 (Whereupon, a brief recess was taken.)

3 MR. THAXTON: The time now is 5:00 o'clock. The
4 auditorium is completely empty except for the panel. We
5 take it at that point that there are no further people to
6 make comments. Therefore, we adjourn this hearing.

7 (Whereupon, at 5:00 p.m. the hearing was
8 adjourned.)

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REPORTER'S CERTIFICATE

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DOCKET NO.: N/A
CASE TITLE: PUBLIC HEARING FOR PROPOSED NOISE STANDARDS
HEARING DATE: May 6, 1997
LOCATION: Beaver, West Virginia

I hereby certify that the proceedings and evidence are
contained fully and accurately on the tapes and notes
reported by me at the hearing in the above case before the
Mine Safety and Health Administration.

Date: May 6, 1997

Gary A. Sabel

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